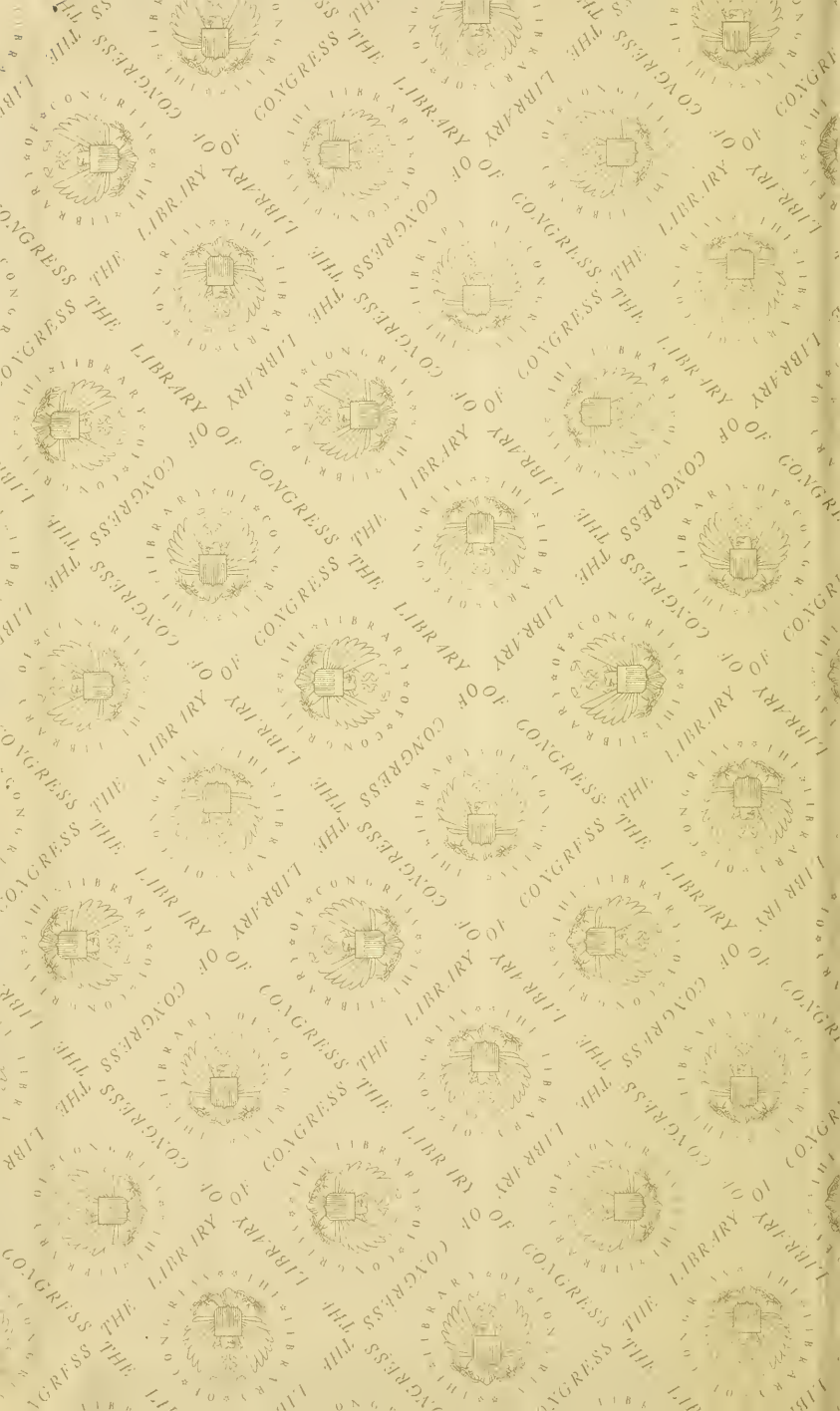
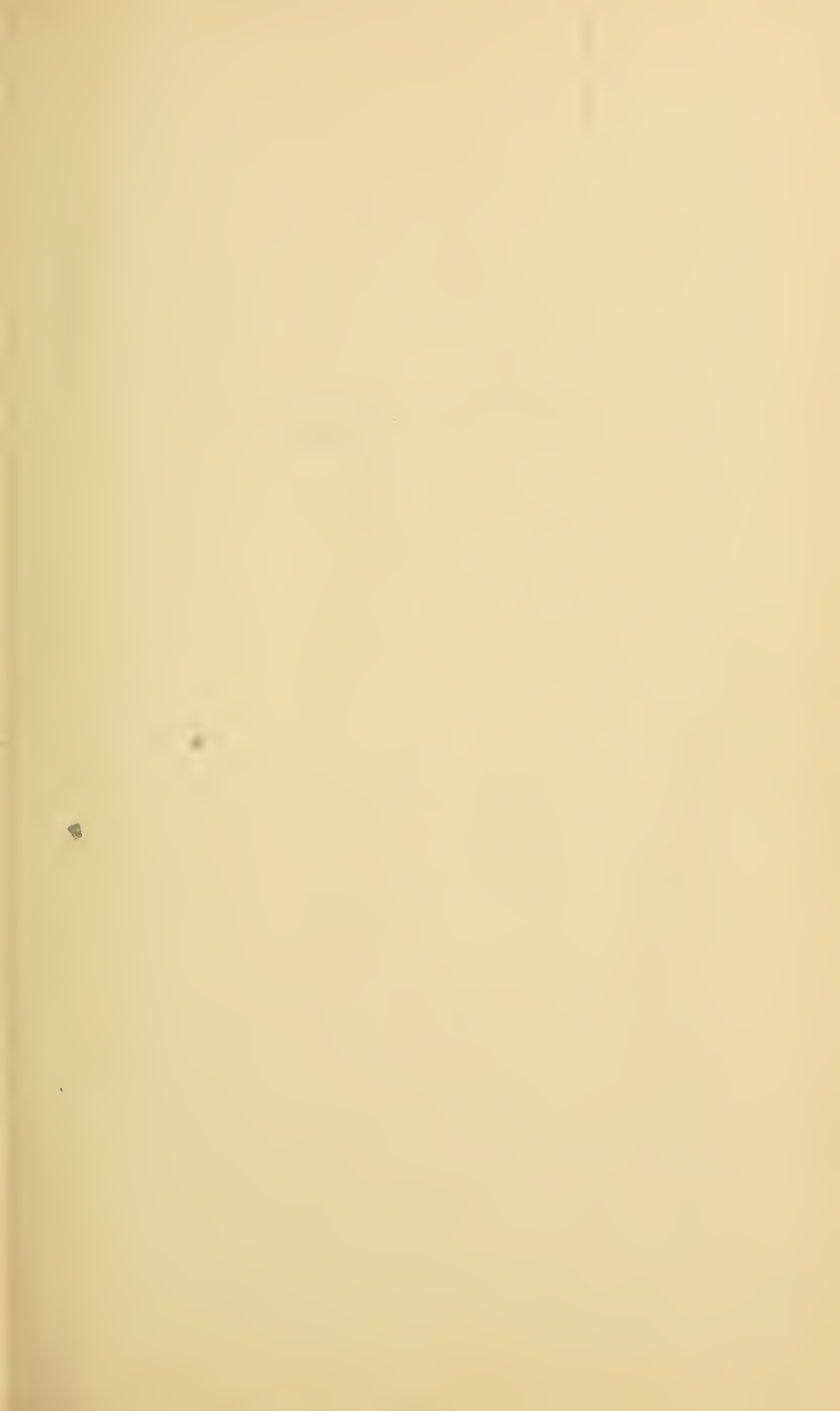








THE FEDERAL EXECUTIVE

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BY

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FOR MARYLAND



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PREFACE

EVEN since 1903, when this book was started, many important changes have occurred in the Federal Executive. In 1903 there was no single book that adequately treated the President's Cabinet and the executive departments. Since then several books on aspects of this general subject have been written. With a few exceptions (notably Dr. Learned's admirable book on *The President's Cabinet*, Dr. Fairlie's *The National Administration*, and Mr. Haskin's *The American Government*), these are merely compilations from the annual reports of the heads of the executive departments, and other government publications. The development and delimitation of the functions of the Executive are an index of the growth of the Federal Government. Much remains to be written about it. In 1903 I was Assistant in Government in two courses given at Harvard by Professor Frederic J. Stimson and the Honorable Charles S. Hamlin dealing with American Government. In 1905 I gave seven lectures at Johns Hopkins for Dr. W. W. Willoughby on "The Executive Administration of the United States"; in the spring of 1912, at Goucher College, three lectures on the "Creation and Development of the Cabinet"; and in November, 1912, two lectures at the University of Virginia, one on "The Growth of the Cabinet-Council Idea in the Federal Executive" and

the other on "The Department of Justice." The purpose of this book, based upon the above lectures, is to add a little to the studies on the subject and to assist in an understanding of the creation, development, organization, and functions of the Federal Executive. To-day, the population of the United States is 101,208,315, exclusive of Alaska and the insular possessions. These people and their vast riches are not adequately protected from foreign interference. A thorough understanding of the Federal Government of to-day is the first step toward proper National Defense.

JOHN PHILIP HILL.

3 WEST FRANKLIN STREET,
BALTIMORE, *February, 1916.*

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CHAPTER I

THE FEDERAL GOVERNMENT

LORD BRYCE, in his introduction to the most recent edition of "The American Commonwealth," says, "Thoughtful Europeans have begun to realize, whether with satisfaction or regret, the enormous and daily increasing influence of the United States." Most Americans are so occupied with the myriad interests that are creating this enormous and increasing power that they do not realize the great changes that are going on in the Government of the United States itself. In October, 1914, the American Bar Association celebrated at Washington the one hundred and twenty-fifth anniversary of the Supreme Court. In this century and a quarter, although the questions with which it deals are somewhat different from those it considered in 1789, the organization and functions of the Supreme Court have not changed. Should a celebration be held of the one hundred and twenty-fifth anniversary of the creation of the Federal Executive, most of the celebrants would be amazed at a realization of the changes that have taken place in the National Administration since General Washington first became President.

The Chevalier de Pontgibaud (Marquis de More), who had served through the Revolution as aide-de-camp to the Marquis de Lafayette, revisited the United States a few years after the institution of the Federal Government. He recorded:¹ —

“The Government officials were as simple in their manners as ever. I had occasion to call upon Mr. McHenry, the Secretary of War. It was about eleven o’clock in the morning when I called. There was no sentinel at the door, all the rooms, the walls of which were covered with maps, were open, and in the midst of the solitude I found two clerks, each sitting at his own table, engaged in writing. At last I met a servant, or rather *the* servant, for there was but one in the house, and asked for the Secretary. He replied that his master was absent for the moment, having gone to the barber’s to be shaved. Mr. McHenry’s name figured in the State Budget for \$2000 (10,500 francs), a salary quite sufficient in a country where the Secretary for War goes in the morning to his neighbor, the barber at the corner, to get shaved. I was as much surprised to find all the business of the War Office transacted by two clerks, as I was to hear that the Secretary had gone to the barber’s.”

Should the Chevalier visit the War Department and the other executive departments of the Government to-day, he might find the government officials as simple in their manners as before, but he would find a very different War Office and a very different Federal Executive from that which so surprised him in the early days of the

¹ *A French Volunteer of the War of Independence*, p. 124.

Republic. The change in the Federal Executive is one of the most remarkable things in the history of the nation. Let us consider for a moment the status of one of the executive departments then and now. Nothing more strikingly illustrates the growth of the Federal Government and the development of the Cabinet and the executive departments than the history of the attorney-generalship.

The first Attorney-General of the United States, Edmund Randolph, of Virginia, spoke of himself as "a sort of mongrel between the State and the United States; called an officer of some rank in the latter and thrust out to get a livelihood in the former."¹ Even as late as 1817, Secretary of State Monroe called attention to the fact that the Attorney-General had at the seat of the Federal Government "no apartment for business, no clerks, nor a messenger, nor stationery or fuel allowed. These have been supplied by the officer himself at his own expense."² Elbridge Gerry, of Massachusetts, and other jealous guardians of the rights of the States, fearful of the power of the newly created Federal Executive, provided Washington with only three advisers who were heads of executive departments, the Secretaries of State, Treasury, and War, but from the first the Attorney-General was considered a member of the advisory council composed of these three Secretaries and himself, which has come to be recognized as the President's Cabinet. Yet,

¹ E. M. D. Conway, *Omitted Chapters*, p. 135.

² *Annals of Congress*, 14th Cong., 2d Sess. (1816-17), pp. 699 and 700.

although considered a member of Washington's first Cabinet, Randolph was not the head of an executive department, and was not even required to reside at the Capital. His powers were insignificant and his compensation so small that he was expected to support himself from his private practice. The power and functions of the present head of the Department of Justice, if they could be known to the Anti-Federalists of Randolph's time, would cause those eminent gentlemen to turn in their graves.

The fiftieth Attorney-General no longer suffers for lack of an apartment for business and a clerk, but he is the head of the great Department of Justice, the total number of whose officials and employees is about 5700,¹ of which number 2070 are appointed by him. The Solicitor-General, the Solicitor of the State Department, the Solicitor of the Treasury, numerous assistant attorneys-general, attorneys, and special attorneys in Washington, numbering more than 300, 86 district attorneys, and numerous special assistants, assistant district attorneys, and other officials, are at present under the direction of that Attorney-General, who in the days of President Monroe had neither stationery nor fuel.

Kipling tells us that in the twilight of the Magic Jungle, in a sort of singsong to little Mowgli, old Baloo recited, —

“As the creeper that girdles the tree-trunk,
The law runneth forward and back.”²

¹ Register of the Department of Justice, 1915.

² *Second Jungle Book*.

And so, in anti-trust prosecutions, in the crusade against the white slaver, in the enforcement of pure-food laws, in interstate commerce cases, in the suppression of fraudulent use of the mails, the power of the Attorney-General runs forward and back throughout all the States of this great Union, and the activities of the Department of Justice wipe out state lines and from year to year increase the power of the Federal Government and its Executive, of whose growth they are the most striking illustrations. ✓

The growth of the executive power has attended the growth of the nation, and its development into its present importance has been necessitated by the fusion of the federation of States into a strongly centralized American nation. To follow in detail the changes in the organization of the executive departments, and to examine the methods and reasons of these changes would take us far into the life history of the Republic.

In 1890, John Fiske wrote: "In signing or vetoing bills passed by Congress the President shares in legislation, and is virtually a third house. In his other capacities he is the chief executive officer of the Federal Union; and inasmuch as he appoints the other great executive officers, he is really the head of the executive department, not — like the governor of a State — a mere member of it." ¹ In 1908, Woodrow Wilson compared the President, as the makers of the Constitution intended him to be, with what he had actually become. "His veto upon legislation was his only 'check' on

¹ *Civil Government in the United States*, p. 232.

Congress, — was a power of restraint, not of guidance. He was empowered to prevent bad laws, but he was not to be given an opportunity to make good ones. As a matter of fact, he has become very much more. He has become the leader of his party and the guide of the nation in political purpose, and therefore in legal action.”¹ The theory expressed by Professor Wilson in 1908 has been the practice of President Wilson as Chief Executive, and as a “third house” of the legislative department he has certainly not confined himself to the powers of the “third house” as described by Fiske. The Federal Executive has outgrown, naturally and properly, the bounds ascribed it by the makers of the Constitution.

The Executive, as it exists to-day, is one of the most important elements in the life of the nation. To understand the meaning of the national life a knowledge of the Cabinet and of the organization and work done by the Executive Departments is necessary, and while much has been written of the executive power, little has been written upon the administrative side of the Executive, as carried out by the departments. As President Wilson remarks, “It is easier to write of the President than of the Presidency.”² The voluminous reports of the heads of the departments, the provisions of the various statutes of the United States relating to the departments, miscellaneous reports, congressional and department records, all set forth the business that the great govern-

¹ *Constitutional Government in the United States*, p. 60.

² *Ibid.*, p. 57.

mental corporation conducts. They also show in detail the methods by which this business is carried on. From them the student may learn how the State Department settles the rights of some naturalized citizen who desires to revisit his former country, but who is claimed by that country to be liable for military service, or how the Republic of Panama sprang into life and American domination of the Isthmus was secured. In the same way the methods of customs collections and post-office establishments may be learned. A knowledge of these matters is essential to an understanding of daily newspaper discussions, reports of the debates and actions of Congress, and of the position of the Government. After a brief discussion of the creation and status of the executive departments, it is my purpose to set forth the organization of these departments, and to indicate the matters with which they deal and their methods of work.

Before doing this, however, it may be well to say a few words about the Federal Government generally. In the rush of our American life it is amazing how much we can forget, and I shall be pardoned for speaking briefly of things that we are all supposed to have once and for all time learned in the schoolroom.

During the Revolutionary War, the common interests of the allied colonies, almost exclusively the carrying-on of the war, were entrusted to the Continental Congress. This body, possessing theoretically little power, exercised, however, the greatest real power over the allied colonies. It combined in itself only the legislative and executive functions, for at that time there did

not exist and there was no necessity for any common judicial system for the allied sovereignties that later became States of our Union. The executive functions of the Continental Congress were exercised through its various committees and officers, but furnished little of permanent value to the American political system. After the Revolution the government of the allied States under the Articles of Confederation for a time gave to the former colonies a more permanent and stronger common life, but that weak Government soon gave way to the present Constitution under which the nation has attained federal life and power.

We learned in school that the Federal Government of the United States consists of three coördinate and theoretically independent branches, the executive, legislative, and judicial. We all know in a general way that the Congress makes the laws and that the Executive and the courts carry them out. The States' rights men in the Constitutional Convention were extremely jealous of the power of the Executive, and I shall show you in the coming chapters that they, as States' rights men, were justified in their fears, for to-day, while the express train and the telephone have eliminated state lines for all commercial purposes, the effect of recent legislation is to efface state lines for many administrative purposes. Before taking up the executive branch of the Federal Government, it will be well to glance at the Government as a whole.

The Executive consists of the President, and, potentially, the Vice-President, — who, aside from the fact

that he presides over the Senate, has no place in the Government, — and the ten members of the President's Cabinet. The Cabinet, as such, is not known to the Constitution. The legal status of its members arises from their being heads of the executive departments, and after all they are legally only arms of the President.

The power of the President and his place in the national life is quite different to-day from the conception of that office held by the framers of the Constitution. They planned a Chief Magistrate, non-partisan, calm and aloof from the throbbing political questions that might agitate the legislative branch of the Government. Above the turmoil of political parties the President was dispassionately to carry out the laws in much the same non-political manner as the Chief Justice was to head the Judiciary. There were certain common interests that drew the thirteen States together: they wished to provide by the Constitution only for the needs as they saw them then — an army for external use, a diplomatic service, also for external use, and a treasury to get money for the above external uses. The framers of the Constitution did not dream that to-day the President would be the leader of the dominant political party in the nation; they did not dream that he would be the one man in the nation primarily responsible to the people for the enactment into laws of their will; they did not dream that the Chief Magistrate of the new Republic would exercise in time the combined powers of the English King and his Prime Minister; but then they did not dream that one arm of the President would be a

Secretary of Labor, whose duties would run into the domestic and industrial life of each of their jealously guarded States. The creation of a Department of Labor in 1913, one hundred and twenty-four years after the inauguration of the Federal Government, for the purpose of fostering, promoting, and developing the welfare of the wage-earners of the United States, improving their conditions, and advancing their opportunities for profitable employment regardless of state lines, is the farthest point in the development of a strongly centralized Federal Government. At the same time it is but an indication of the enormous increase in the power of the Executive. Alexander Hamilton and the Federalists would find this increased power of the President quite to their liking, but the President of to-day is a more powerful factor in the Federal Government than even they dared expect in 1789. Party organization and the machinery of legal primary elections were not thought of in the days when President Washington gravely and with due decorum considered the status of his Cabinet and kept the Vice-President out of it; but neither were express trains and telephones. We find the latter extremely convenient and the nation no longer fears the power of the President.

Besides the Executive there are to-day in the framework of the Federal Government two other branches. With the Judiciary this book will have little to do. As to the other branch of the Government, the Congress of the United States, it is only necessary to say that, while it theoretically makes the laws, more and more in these

days of the political leadership of the President, in much important legislation Congress merely enacts into law the principles that the majority party has declared in its platform. The Judiciary and the legislative branch of the Government have departed little from the theories of the Fathers. There are more courts and the Congress is larger, but the fundamental concepts of neither have greatly changed. Congress makes a greater number and more far-reaching laws, but its machinery is the same. The courts try more cases of a more far-reaching character, but their machinery is the same. The Executive has changed. In the coming years it will change more. Seats in Congress for the members of the Cabinet may come in time, and we may have places in the legislative department for arms of the Executive for which the Constitution does not specifically provide. The development of the Cabinet and the executive departments is the most interesting thing in the growth of the Federal Government. Let us see on what basis and out of what they were created.

CHAPTER II

CREATION OF THE EXECUTIVE DEPARTMENTS AND THE CABINET

THE executive business of the United States has, since the organization of the Government, been carried on by the executive departments, which have been increased from time to time as the requirements of the Government demanded. The Departments of State, the Treasury, and War were created by the First Congress in 1789, and the Department of the Navy was established soon after. The Post-Office and the Department of Justice had their beginnings in the same period, although they did not take rank as executive departments till much later. The Department of Commerce and Labor, created in 1903, the Department of Labor carved from it in 1913, with the Agricultural and Interior Departments, belong to the latter half of the history of the nation. There are to-day ten coördinate executive departments.

The Constitution provides that "the executive power shall be vested in a President of the United States of America."¹ It then proceeds to declare the length of time the President shall hold office, the method of his election and the qualifications of a President. The section contains no specific enumeration of the executive power conferred. Goodnow, in his treatise on "Com-

¹ Art. II, par. 1.

parative Administrative Law,"¹ says that these words "executive power" meant "that the President was to have a military and political power rather than an administrative power. The meaning of these words is further explained by the enumeration of the specific powers which were granted to the President by the Constitution. These are the same powers possessed by the governors of the Commonwealths. They are the power of military command, the diplomatic power, the limited veto power, the power of pardon, the power to call an extra session of Congress, to adjourn it in case of a disagreement between the houses, and the power to send a message to the Congress. The general grant of the executive power to the President means little except that the President was to be the authority in the Government that was to exercise the powers afterward enumerated as his. The only other enumerated power is an administrative power, and it is also the only purely administrative power that is mentioned clearly in the Constitution. This is the power of appointment. . . . Beyond the power of appointment he had, so far as the express provisions of the Constitution were concerned, no control over the administration at all."

The complex system of executive departments is not provided by the Constitution. It has arisen by acts of Congress, a slow and often tentative construction, provided as the national interests became more varied and far-reaching, and the needs of administration became more exacting. Our form of government is that denomi-

¹ Vol. 1, p. 62.

nated as rigid because of its foundation on a written instrument; but like many of our governmental institutions that are the product of gradual evolution, the law regulating the proceedings of the executive departments, and the relations of the Cabinet to the President and Congress, is the law of the unwritten Constitution.¹

The Constitution provides that the President "may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices."² The only other mention of the executive departments in the Constitution follows the provision for appointment by the President, with the consent of the Senate, of all officers of the United States whose appointments are not otherwise provided for by the Constitution. By this clause of the Constitution "Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the Courts of Law, or in the heads of departments."³ Upon this meager foundation have been created all ten great organizations that to-day administer the domestic and foreign business of the United States.

The Articles of Confederation, which preceded the Constitution, contained no provision for any executive departments, and the President of Congress under the Confederation was in no sense an executive head of the Government; yet the Continental Congress and the Congress under the Confederation had been compelled

¹ Woodburn, *American Republic*, p. 191.

² Art. II, sec. 2, clause 1.

³ *Ibid.*, clause 2.

to create some sort of executive machinery for carrying on the struggle for independence, and for conducting the business of the weak Union that was formed after the peace with England. When, on April 1, 1789, the First Congress under the Constitution was organized in Federal Hall in New York, and settled down to the task of providing for the organization of the Government, it found some models for the executive department. There was a bureau of foreign affairs, and a bureau of war, each under the direction of an officer denominated a secretary. There was also a board of commissioners in charge of the Treasury, and a postmaster-general, whose duties were similar to those exercised by that officer under the colonial régime.

Congress was further aided by the knowledge possessed by many of its members of the discussions that had taken place in the Constitutional Convention, where, among others, a plan had been proposed (August 20, 1787) by Gouverneur Morris for a council of state, among whose members he named a Secretary of Commerce and Finance, and another officer who was to have charge of agriculture, manufactures, and kindred matters, under the title of Secretary of Domestic Affairs.¹ There had also been much general discussion of the subject, and many opinions expressed. One of the most interesting of these appears in a letter, written in 1788 by Commodore John Paul Jones, in which he tells the Marquis de Lafayette that "had I the power I would create at least seven ministries in the primary organiza-

¹ *Documentary History of the Constitution.*

tion of government under the Constitution. In addition to the four already agreed upon, I would ordain a Ministry of Marine, a Ministry of Home Affairs and a General Post-Office; and as commerce must be our great reliance it would not be amiss to create also as the eighth a Ministry of Commerce.”¹ Congress, however, was dominated by no such broad spirit as that expressed by the great sea captain.

State jealousy of the central power operated against the creation of any more departments than were actually necessary; and after much debate in the House, where the subject was first introduced by Elias Boudinot, a former President of the Continental Congress and a member from New Jersey, it was decided that there should be but three departments. These were to be Foreign Affairs, Treasury, and War, each with a secretary in charge of its work.

Although the proper management of the finances was the most pressing need, and the creation of a Treasury Department had been proposed by Boudinot as the first department, the difficulties of its organization proved greater than those of any other department, and the Department of State was the first to be created. On July 27, 1789, the Senate and House of Representatives provided for its organization by passing “an act for establishing an Executive Department to be denominated the Department of Foreign Affairs.”² This fundamental

¹ Original manuscript in the archives of the Congressional Library.

² 1 U.S. Stat. L. 28.

act provided for an executive department whose principal officer should be called the Secretary of Foreign Affairs, and who should perform and execute such duties as should from time to time be enjoined on or entrusted to him by the President relative to "correspondences, commissions, or instructions to or with public ministers or consuls from the United States, or to negotiations with public ministers from foreign States or princes, or to memorials or other applications from foreign public ministers or other foreigners, or to such other matters respecting foreign affairs as the President of the United States shall assign to the said department."

The duties of this department were confined entirely to foreign relations, and closely approximated those of the Secretary of the Department of Foreign Affairs under the Confederation. Its descent from the old department was indicated by the provision of the act by which the Secretary of the new department was given custody of the records, books, and papers in the office of the Secretary who had had charge of Foreign Affairs under the Confederation. The department did not long retain its character as dealing exclusively with foreign affairs. Administrative functions of a very diverse and heterogeneous nature were added almost immediately upon the original founding of the department, for within two months was passed an act ¹ providing for the safe-keeping by the secretary of this department of the acts, records, and seal of the United States and also for the publication and authentication under his authority of

¹ September 15, 1789. 1 U.S. Stat. L. 68.

the laws passed by Congress. Thus, to the duties of the Foreign Secretary were added duties analogous to those of Keeper of the Great Seal of England. To indicate this new province, it was provided that the department should thereafter be denominated the Department of State, and that its principal officer should thereafter be called the Secretary of State. The department, though shorn of some of its miscellaneous functions, remains to-day substantially the same as when it was created, but its organization has kept pace with the growth that has followed the marvelous expansion of the national interests. The establishing act provided for the secretary, one inferior officer to be called the chief clerk, and assistant clerks. To-day there are three assistant secretaries, and numerous clerks and assistants of various sorts.

The Secretary of the Treasury takes rank immediately after the Secretary of State, but the Department of War was the second department in order of creation. On the 7th of August, 1789, was passed the "act to establish an Executive Department to be denominated the Department of War."¹ The secretary of this department was to perform and execute such duties as should be entrusted to him by the President "relative to military commissions, or to the land or naval forces, ships or warlike stores of the United States, or to such other matters respecting military or naval affairs as the President of the United States shall assign to the said department, or relative to the granting of lands to persons

¹ 1 U.S. Stat. L. 49.

entitled thereto, for military services rendered to the United States, or relative to Indian affairs."

As in the case of the State Department the new Department of War was named as the depository of all books and records in the office of the Secretary for the Department of War, established under the Confederation of the "United States in Congress assembled." The organization of the department followed that of the Department of Foreign Affairs, and it was placed under the charge of a Secretary of War.

The creation of the Departments of State and of War was accomplished with comparative ease, but it was not until September 2, 1789, six weeks after the creation of the first department, that the act was passed for the establishment of the Treasury Department. The "Annals" of Congress¹ show the diversity of opinion that existed as to the organization of the department and the opposition from certain quarters to the substitution of a single secretary for the board that had directed the Continental finances.² The war with England had left a great burden of debt upon the young nation, and its management presented momentous problems. The Constitution provided for the collection of revenue from various sources, but was silent as to the measures to be employed. No aid of any great value was to be derived from the methods employed under the Confederation, for the lack of power to raise money had been the fatal

¹ May 19-21, and July 23, 1789.

² James Schouler, *A History of the United States under the Constitution*, vol. I, p. 93.

defect of that weak attempt at government. Furthermore, the organization of the Treasury Department presented internal difficulties that were totally absent in the other departments, and it is a remarkable commentary upon the ability of the framers of the act which established the Treasury Department that it continues to-day under the original plan, and that in all the history of its vast dealings there has occurred no important dereliction of duty by those in charge of the nation's funds. Its organization is, in comparison with the other departments, very complicated. It is sufficient here to note that in addition to the Secretary of the Treasury, there were named as officers a Comptroller, an Auditor, a Treasurer, a Register and an assistant to the Secretary. It was stated in the act that the Secretary of the Treasury was "to be deemed head of the Department." The fact that the duties of the other officers were so important shows the fear of Congress of putting too much power into the hands of the Secretary, and this caution is accentuated by the fact that of all the officers above enumerated only the assistant secretary was to be appointed by the Secretary of the Treasury.

Washington was inaugurated April 30, 1789, and at once proceeded to carry on the Government with the aid of the executive machinery that had served the United States under the Confederation. John Jay had been Secretary of Foreign Affairs under the Confederation, and upon the establishment of that department under the Constitution, he was offered the new position. He preferred rather to become the Chief Justice, but re-

tained his old position at the President's request until March 21, 1790, when Jefferson returned from France to assume his duties as the first Secretary of State. On September 11, 1789, Alexander Hamilton was nominated by the President, confirmed by the Senate, and commissioned Secretary of the Treasury, and in this manner, just seven days after the establishment of the Treasury Department, became the first member of the first Cabinet under the Constitution. On the same day, Henry Knox, of Massachusetts, was nominated, and on the following day confirmed, as Secretary of War. On the 25th of September followed Jefferson's nomination as Secretary of State, and with his confirmation the new Cabinet was completed, although Jay continued to administer the affairs of State for six months longer.

The heads of these three departments stood upon an equal footing as heads of executive departments and advisers to the President, but there were two other officers of the Government, the Attorney-General and the Postmaster-General, whose position was not for some time so clearly defined.

The Act of September 24, 1789,¹ which established the judicial courts of the United States, provided for the appointment of "a meet person, learned in the law, to act as Attorney-General for the United States." This officer, in addition to his duties to prosecute and conduct all suits in the Supreme Court in which the United States should be concerned, was directed to give his advice and opinion upon questions of law "when required by the

¹ 1 U.S. Stat. L. 73.

President of the United States, or when requested by the heads of any of the departments touching any matter that may concern their departments."

Commenting on this provision, Dr. Learned ¹ says: "The portion of the act devoted to the Attorney-General's place is curiously brief. This brevity suggests the marked immaturity of the administrative judicial system of the Central Government. Indeed, so far as the Central Government is concerned, the office was an innovation, for no such office had been known to the Confederation. On the other hand, the English attorney-generalship, which doubtless furnished the men of 1789 with a model was old and well established. Moreover, there had been Attorneys-General in many of the colonies." Although those who drafted the Judiciary Act may have had in mind the Attorney-General of England or similar officers of the Colonial Governments, the Attorney-General of the United States from the first occupied a position quite unlike that held by any of these officers, and Dr. Learned is undoubtedly correct in his statement, that "the office was an innovation." President Lowell, of Harvard, in "The Government of England," ² says: "The principal law officers of the Crown are the Attorney-General and the Solicitor-General. Their opinion on questions of law may be asked by the Government and by any department, although many of the departments are provided with permanent legal counsel of their own whose advice is sufficient for all ordinary matters." He also says: "These

¹ *The President's Cabinet*, p. 106.

² Vol. I, pp. 132, 133.

gentlemen hold no judicial position; and curiously enough, while a part of the Ministry, are never in the Cabinet." Mr. Monroe, while Secretary of State in 1817, wrote: "The Attorney-General has been always, since the adoption of our Government, a member of the Executive Council, or Cabinet. His duties in attending the Cabinet are equal to those of any other members." ¹

The statute which created the office merely indicated in the most meager terms the duties of the Attorney-General, and it was not till 1870 that the Department of Justice was created. The office has gradually developed and its duties become defined as the Federal Government has itself grown; but by virtue of his advisory capacity, the Attorney-General has been considered a member of the Cabinet since the appointment of Edmund Randolph, the first incumbent of the office.

The first Cabinet was therefore made up of the Secretaries of the three departments, and the Attorney-General, who was himself not the head of a department, and therefore not one of the constitutional advisers of the President referred to in the clause providing for the furnishing of opinions to the President. He was a member of the Cabinet by reason of the advisory position provided by the Act of Congress that created his office. The fifth of the executive officers of the Government occupied a position exactly opposite to that of the Attorney-General. The Postmaster-General was for many years head of a department that performed a most important function of government administration, but it

¹ 14th Cong., 2d Sess. (1816-17), *Annals*, p. 699.

was not till 1829 that the head of the Department of the Post-Office was accorded a Cabinet position.

The Post-Office Department has the longest record of any of the executive departments of the Government. In July, 1775, nearly a year before the Declaration of Independence, a general post-office was created and Franklin chosen Postmaster-General. The Articles of Confederation provided for the continuance of this department, and on September 22, 1789, the First Congress passed an "Act for the temporary establishment of the Post-Office."¹

This act provided for the appointment of a Postmaster-General whose powers should be the same "as they last were under the resolutions and ordinances of the late Congress." This act was to continue in force for one year, and was continued in 1790, and again in 1791. In 1792 a more comprehensive act was passed, and in 1794 the present department was created. The work of the department was of a purely routine character, and in the beginning the Postmaster-General was considered unimportant as compared with the heads of the State, Treasury, and War Departments. In 1829, however, with nearly eight thousand deputy postmasters under his control, and consequently with more patronage than that of the head of any other department, the Postmaster-General could no longer be treated as of subordinate rank, and President Jackson invited Postmaster-General Barry to enter the Cabinet as one of his advisers.

¹ 1 U.S. Stat. L. 70.

When the First Congress closed its work, it had provided for the immediate executive needs of the government administration, and the changes that thereafter occurred in the existing departments, and the creation of new departments came gradually as the natural results of experience and of enlarged and more varied administrative demands.

The first evidence of the enlarged executive requirements of the nation was the division of the province of the War Department. During the early years of the Republic there had been constant difficulties with English aggression on the seas, and in 1798 the relations with France had come to such a state that war with that country seemed unavoidable. The natural outcome of these conditions was increased naval activity, and on April 30, 1798, a new division of the executive administration was created under the name of the "Department of the Navy."¹ The organization of this department followed the prevailing type as exemplified by the Department of State, and at its head was placed a Secretary of the Navy. His duties, as set forth in the fundamental act, were to "execute such orders as he shall receive from the President of the United States, relative to the procurement of naval stores and materials and the construction, armament, equipment, and employment of vessels of war, as well as other matters connected with the naval establishment of the United States." The act concluded with the natural corollary to the creation of the department that the new Secretary was to take

¹ 1 U.S. Stat. L. 553.

possession of the books and records appertaining to his department, which were then deposited in the office of the "Secretary at War."

The first member of the Cabinet to take his place as representative of the new department was Benjamin Stoddert, of Maryland, who was appointed by President Adams, upon the refusal to serve of George Cabot, of Massachusetts, to whom the secretaryship was first offered. It is recorded of Secretary Stoddert that he was "a Georgetown merchant, without political antecedents, who proved himself an efficient officer and the most constant member of President Adams's Cabinet."

¹ Schouler, vol. I, p. 404.

CHAPTER III

DEVELOPMENT OF THE EXECUTIVE DEPARTMENTS AND THE CABINET

THE creation of the Navy Department was made necessary by the development in importance of an existing part of the administrative work of the Executive, but the establishment of the next department was necessitated by the assumption of new burdens by the Government, and by an enlargement of the sphere of the national activity. The creation of the Department of the Interior and of the three departments that have since been added shows in a marked degree the increased power of the Executive of the nation. The acquisition of vast territories wrested from Mexico, in addition to those acquired by peaceful means, imposed greater responsibilities upon the President, while the development of the country increased greatly the various miscellaneous duties that had in the early days been performed by the existing departments as unimportant incidents.

As indicated by the plans for the departments submitted to the Constitutional Convention, the idea of a general home department was discussed at the very foundation of the Government, but postponed as unnecessary under the conditions that then existed. The demand for such a division of the executive administration became imperative in the days when the Wilmot

Proviso was concentrating all attention on internal affairs, and at a time when no foreign complications diverted discussion from the great questions that underlay the Missouri Compromise.

In February, 1849, Representative Vinton, a member of the Ways and Means Committee, reported a bill in the House that had been drafted by Robert J. Walker, President Polk's powerful Secretary of the Treasury. The bill was passed in the House by a strong non-partisan vote, and in the last days of the session the Senate concurred in the measure.¹ On March 3, 1849, this bill became a law under a title which is indicative of its character as a general measure of department reformation. It is called "An act to establish the Home Department, and to provide for the Treasury Department an Assistant Secretary of the Treasury, and a Commissioner of the Customs." It differs materially in some of its provisions from the acts by which the existing departments had been created and for that reason merits a more careful examination. The creative portion of the act provided "that from and after the passage of this act there shall be created a new executive department of the Government of the United States, to be called the Department of the Interior; the head of which department shall be appointed by the President of the United States by and with the advice and consent of the Senate, who shall hold his office by the same tenure, and receive the same salary, as the Secretaries of the other executive departments, and who shall perform the duties

¹ Schouler, vol. v, p. 121.

assigned him by this act." The significant portions of this part of the act are those that provide that the Senate shall concur in the appointment and the definite assignment of duties by Congress to the new Secretary. In the previous acts establishing or modifying departments, it had been stated merely that the head of the department was to be appointed by the President and that he should perform those duties relative to certain named matters assigned him by the President.

It was intimated in the Constitution that the heads of the departments should be appointed by and with the consent of the Senate,¹ and this had been the practice from the time of the appointment of the first Secretary; but by this act, for the first time, this practice was noted in the establishment of a department. The act in its further provisions showed the clearer understanding that had been gained of the position of the departments.

Among the heterogeneous duties assigned to the new Secretary were the supervision of the office of the Commissioner of Patents, formerly exercised by the Secretary of State, and the supervision of the General Land Office and of the accounts of the marshals, clerks, and other officers of the United States Courts, formerly the province of the Secretary of the Treasury. The War Department lost control over Indian affairs, and the Navy Department was required to cede its supervision of pensions to the new Secretary. In addition to these duties the control of the census affairs was transferred from the State Department, while such miscellaneous

¹ Art. II, sec. 2, clause 2.

matters were added as the supervision of the mines owned by the United States and the power before exercised by the President over the commissioners of public buildings, and over the penitentiary of the District of Columbia. The first Secretary of the new department, Thomas Ewing, of Ohio, was assuredly in charge of an amount of administrative work as miscellaneous as it was important and far-reaching in its scope.

Judged by the nature of the duties originally assigned to them, as well as the time of their creation, the departments may be said to be capable of division into two classes. The original departments, with which the Department of the Navy must be classed, were all formed during the infancy of the Republic, and their development has been but an amplification under wider and better laws of the work of the Federal Government. The Departments of the Interior and of Agriculture, and the still new Departments of Commerce and of Labor, belong to the powerful Government of a strongly centralized nation, and in their work are exponents of the last half of the national life, rather than of the days of early struggle and development, when state sovereignty was the prevailing conception and the Union savored more of a strong federation of States than of such a Union as emerged from the great constitutional struggle that caused the Civil War. The early departments ministered to the bare necessities of the Government. The later departments foster the more general welfare of the nation.

The Department of Agriculture was created by Act

of May 15, 1862, for a purpose that in 1789 would have been deemed entirely outside the province of the functions of the National Government, — to diffuse among the people of the United States useful information on subjects connected with agriculture in its most general and comprehensive meaning.

Although designated a department, it was not classed with the high executive departments of the Government. It was rather an independent bureau, and at its head was placed not a Secretary, but merely a Commissioner. It was not till February 9, 1889, that this department was placed upon an equal footing with what may be termed the Cabinet Departments. By the act of that date,¹ Congress made it one of the executive departments and placed it in charge of a Secretary of Agriculture. Its duties were enlarged, and its first head, Norman J. Colman, of Missouri, became a member of President Cleveland's Cabinet on February 13, 1889. In this manner the industries of the country, a subject seemingly non-executive, were for the first time accorded a representative in the Council of the Chief Executive, and a new theory was definitely added to that unwritten part of the Constitution that has been slowly developing since the formation of the Union.

The history of the erection of the Department of Commerce and Labor shows the same development. The national importance of the labor interests of the country received recognition in the establishment of the Bureau of Labor under the act of Congress approved

¹ 25 U.S. Stat. L. 659.

June 27, 1884, which occupied a position very similar to that of the Department of Agriculture at the time of its first establishment. As far as the Government was concerned, the commercial and manufacturing interests of the country were, at that time, left to the casual attention of various offices of the several departments. With the great increase of the industries of the nation the need of more definite government supervision of industrial matters grew to be generally recognized. Many petitions on the subject were made to Congress, various commercial conventions presented memorials on the same theme, and the subject has been referred to in the more recent political platforms and messages of the Presidents. The arguments offered for a Department of Commerce were based on the fact noted by John Paul Jones in 1788, that the United States was a distinctly commercial and industrial nation. The creation of the Department of Agriculture was cited as a precedent, and the fact was set forth that the Census Report for the year ending June 1, 1900, showed that the aggregate value of the products of the manufacturing plants of the United States for that year was about four times the aggregate value of all the products of agriculture for the same period. It was argued on these premises that there existed all and as strong reasons for the supervision of commerce by the Government, as those that had led to the establishment of the Department of Agriculture, and, as a result of the representations before congressional committees and the general public demand, a bill was originated in the Senate, passed in

the House, and on February 14, 1903, approved by the President, which recognized and provided for the needs of labor and of commerce. Under the provisions of this act ¹ a new department was added to the executive administration. On February 16, 1903, the appointment of George B. Cortelyou, of New York, was confirmed by the Senate, and two days later the Secretary of Commerce and Labor, the ninth member of the Cabinet, qualified as head of the ninth of the executive departments of the Government.² The tenth and last of the executive departments was created by act approved March 4, 1913. By this act the new member of the Cabinet was charged with the duty of fostering the welfare of the wage-earners of the United States, improving their working conditions and advancing their opportunities for profitable employment; he is enabled to perform the duties of mediator and to appoint commissioners of conciliation in labor disputes whenever in his judgment the interests of industrial peace may require it to be done. From the old Department of Commerce and Labor, the Bureau of Immigration and other matters were taken and given to the new department. On March 5, 1913, William Bauchop Wilson, of Pennsylvania, became the first Secretary of Labor.

The tendency of the original creation of the administrative machinery was to limit the work of the executive departments as well as their number to the bare

¹ 32 U.S. Stat. L. 825.

² Department of Commerce and Labor, Organization and Law (1904).

necessities of the Government. The Department of Foreign Affairs was made to do double duty under the name of the Department of State, but the old conception of the Union has changed, and with this change, the old restrictive idea has ceased to guide the policies of the nation. Expansion is the underlying theory of present internal administration, as well as of foreign affairs, and it is probable that within a few years the ever-widening sphere of executive administration will demand further enlargement of the means of doing the increased business of the Government. It is to be expected that the history of the Departments of Agriculture, of Commerce, and of Labor, foreshadowed in a measure by that of the Post-Office Department, will be repeated, and that in the near future divisions which now exist as independent bureaus or commissions will follow the course of these departments and in their turn become parts of the executive administration, equal in rank to those that were established by the first Congress that assembled under the Constitution. It is not improbable that we shall some day have a Department of Education developed from the Bureau of Education, now in the Department of the Interior, and a Department of Transportation, already foreshadowed, perhaps, by the Interstate Commerce Commission.

I have thus briefly sketched the creation and development of the executive departments and the Cabinet. It is unnecessary to go more fully into the history of each of the departments, but it will be of value for us to examine more carefully the development of the Depart-

ment of Justice, which is the most striking example of the development of a great executive department from extremely small beginnings, and from what I have to say about the Department of Justice one may readily understand the similar processes of development which have taken place in the other departments.

It is probable that the character of the early Attorneys-General and their close relation to the Presidents under whom they served had much to do with the defining of the duties of the office. Randolph had been the first Attorney-General of the State of Virginia under its new Constitution of 1776. For years he had been on terms of intimate friendship with Washington, and because of his qualifications and his personal relation it was natural that Washington should consider him a member of his Executive Council or Cabinet.

Randolph served as Attorney-General until January 2, 1794, when he became Secretary of State. In the early days of the Administration it was definitely settled that the President must look to his Attorney-General for legal advice. In 1793 the President asked the advice of the federal judges concerning certain questions arising under the treaties with France. "It was, perhaps, fortunate for the judges and their successors," writes the late Professor James Bradley Thayer, "that the questions then proposed came in so formidable a shape as they did. There were twenty-nine of them, and they fill three large octavo pages. Had they been brief and easily answered, the court might not improbably have slipped into the adoption of a precedent that would have en-

grafted the English usage upon our national system." The judges refused to furnish the advice asked by the President. Commenting on this, Professor Thayer adds, "As it is, . . . while the President may require the written opinion of his Cabinet, he does not possess a like authority in regard to the judicial department."¹ So, at the outset, it was settled that the Attorney-General was the sole legal adviser of the President. It was soon decided that, although he was the chief law officer of the Government, he was not the legal adviser of Congress.

Few men did more to define the duties of the Attorney-General than William Wirt, of Maryland and Virginia, who accepted the office in October, 1817. In January, 1820, he declined to give to the House a legal opinion demanded of him, and from that time it has been settled that Congress cannot demand legal opinions from the Attorney-General. In refusing to act as legal adviser to Congress, Wirt said: "It is true that in this case, I should have the sanction of the House . . . and it is not less true that my respect for the House impels me strongly to obey the order. The precedent, however, would not be less dangerous on account of the purity of the motives in which it originated. I may be wrong in my view of the subject; the order may be sanctioned by former precedents; but my predecessors in office have left nothing for my guidance."²

Wirt also further limited the duties of his office when on April 3, 1820, he wrote to the Secretary of the Navy,

¹ *Legal Essays*, pp. 53, 54, note. (1908.)

² 16th Cong., 1st Sess., vol. 5, House Documents, no. 68, p. 2.

“As my official duty is confined to the giving my opinion on questions of law, I consider myself as having nothing to do with the settlement of controverted questions of fact.”

The reorganization of the office of the Attorney-General was from time to time subject to careful consideration. President Jackson, in a message to Congress, called attention to the need of reorganizing the Attorney-General's office. He believed that the salary of this officer should be increased, that he should be given proper quarters for his work and proper assistance, and should be charged with the general superintendence of the Government's legal matters.¹ It was also proposed that the Attorney-General should remain permanently in Washington, and not engage in private practice. A bill based upon these suggestions failed to pass Congress, but in 1830 the office of Solicitor of the Treasury was created, and the salary of the Attorney-General was raised to \$4000, at which amount it remained until 1853. President Polk agreed with Jackson in his desire to increase the duties and responsibilities of the Attorney-General, but it was not until Cushing became Attorney-General that the office began to assume the form of a regular government department. He made certain pertinent suggestions for the reorganization of the department,² and it has been said of him that he “raised the office of Attorney-General and organized it to be

¹ *A Compilation of the Messages and Papers of the Presidents*, by James D. Richardson, vol. II, pp. 314-15.

² *Opinions of the Attorney-General*, vol. VI, pp. 326-55.

in truth and in fact a department of Government."¹ Cushing devoted considerable thought to the relation of the President to the executive departments.²

The Civil War had greatly added to the business of the Department of Justice. In 1861 the department had grown to such an extent that there were besides the Attorney-General an Assistant Attorney-General, a Solicitor of the Court of Claims, and the Solicitor of the Treasury. From 1861 the district attorneys were under the direction of the Attorney-General.³ The great volume of law business arising from the Civil War was necessarily performed by special counsel, who were employed at a great expense. It is said that between the years 1860 and 1870 the Government was obliged to pay about \$100,000 a year for extra counsel. To this fact, as much as to any other, is probably due the reorganization of the office of the Attorney-General and its erection into the Department of Justice during the Administration of President Grant in 1870. The purpose of this act was to create for the Federal Government a comprehensive and capable law department. And from that time to the present Administration, the various law matters of the Government have become more and more closely supervised by the Attorney-General. The power of the department has greatly increased in the last few years. The addition and growth of the Bureau of Investigation, the special agents of which, throughout the United

¹ *Memorial of Caleb Cushing* (Newburyport, 1879), p. 169.

² *Opinions of the Attorney-General*, vol. VII, pp. 453-82.

³ Easby Smith, *The Department of Justice*, pp. 16, 28-30.

States, gather information as to violations of the law, the assumption of control over the attorneys of the Interstate Commerce Commission, and the closer subordination of the district attorneys which took place under the administration of Attorney-General Wickersham, have attended the additional power conferred by the pure-food laws, white-slave laws, etc., and the broadened scope of such laws as section 215, Penal Code, which in 1909 was expanded to include, as a violation of the privileges of the United States mail, the mailing of any letter in pursuance of a scheme to defraud. Previous to 1909 only schemes which contemplated the use of the mails in their inception came under the federal law. Under the present law the department has charge of all manner of frauds, for few schemes to defraud exist in which the mails are not used to some extent, and any use of the mails to further the fraud is sufficient to give rise to federal prosecution. This change in the law is one of the most noticeable additions to the power of the Federal Government for the protection of the people. Under it the vendors of "fake" or unfairly inflated mining and other corporation stocks, are in danger of federal penitentiaries, and it covers a great multitude of cases. A most striking example of its broad scope is found in a case I once prosecuted as United States Attorney. The defendant, who pleaded guilty and was sentenced to a term in the Atlanta Penitentiary, although already married, posed as a bachelor, won the heart of a lady of some wealth in a rural community, and then, under the plea of providing himself a career

for the happiness of his betrothed, defrauded her of many thousand dollars. He told the lady he was using the money to pay his expenses in a prominent medical school, whereas, "in truth and in fact," as the indictment read, he used the poor lady's funds for the support of his wife and family, and for the entertainment of sundry other ladies to whom his wife would most certainly have objected had she known of his relations with them. The laws for the protection of the mails have thus given the Federal Government jurisdiction over matters which many of the framers of the Constitution would have considered as especially without the purview of the Federal Government.

CHAPTER IV

STATUS OF THE HEADS OF THE EXECUTIVE DEPARTMENTS COLLECTIVELY, AS AN ADVISORY COUNCIL OR CABINET

BEFORE considering the organization and work of the departments whose gradual development has been traced, it will be instructive to consider the status of the heads of the departments, collectively as a Cabinet, and individually as parts of the executive machinery. It is essential to a comprehension of the work of the departments to understand the essential laws that define or indicate the relations that exist between the President, the Congress, and the nation at large. In the same gradual and tentative manner in which the executive administration has been created, the position of the Cabinet has been defined, and the rules that govern the various departments have been evolved.

Lord Bryce, the great authority on American Government, assures us that there is in the Government of the United States no such thing as a Cabinet in the English sense of the term,¹ nor is there in the United States a body that takes the position of the boards of responsible ministers that in Continental Governments bear the name of a Cabinet. The English Cabinet is practically a committee of the sovereign, the Parliament. From this supreme body it derives its existence,

¹ *The American Commonwealth*, vol. I, p. 86.

and its power and duration depend solely upon the support that its creator gives it. The Ministry of the French Government occupies a somewhat similar position. Because of its relation to the legislative body the English Cabinet is properly called, and in fact is, the "Government."

The management of the affairs of the allied colonies, and of the later association of States under the Articles of Confederation, presented a mode of government in many ways like that of England to-day, and in the debates upon the various plans considered by the Constitutional Convention, there appeared many advocates for the adoption of such a system for the new American nation. The Constitution, however, provides for nothing in the nature of a Cabinet nor is such a body recognized by the laws; yet for want of a better term the collective heads of the various executive departments have from the days of Washington been popularly styled "the Cabinet."

It has been said that the English Cabinet is the executive agent of the Commons. The Constitution of the United States vests the executive function exclusively in the President; and as in England the Cabinet is the executive agent of the supreme power that combines all functions, so in America, the heads of the departments are the agents of the supreme executive power, the President. The English Cabinet formulates the policies of the Government, but while the American Cabinet participates in the formation of executive policies, it does so merely as an advisory body, whose advice need

not be heeded by the President. Its sole legal power lies in the individual position of its members as constitutional officers of the United States and executive agents of the President. The records of its meetings have no more force than those of any voluntary association, and although it plays a part in the national affairs that is ever assuming more importance, it has at law no recognized status of any sort.

The position of the members of the Cabinet as executive advisers arises from their special knowledge of their own departments, and from their general knowledge as experienced men of affairs. Although the Constitution provides that the President may require the opinions of the heads of the executive departments, it was not expected that he should do more than ask their opinions as individuals. Woodburn¹ states that it was not contemplated "that he should assemble them together for consultation and advice on the general policy of the administration." He then says, "He might follow this advice or not as he chose: he could proceed with the most important political matters without asking it, as John Adams did in our French relations in 1800, and Jefferson in the Louisiana Treaty in 1803, and in the Monroe-Pinkney Treaty of 1806."

The advisory position of the Cabinet has varied under different Administrations. Washington usually consulted his Cabinet members individually. During the Administration of Adams the Cabinet took a more definite position, and its members asserted advisory

¹ *The American Republic and its Government*, p. 190.

rights. Jefferson's use of his Cabinet is interesting. "Where a question occurred of sufficient magnitude to require the opinions of all the heads of departments, he called them together, had the subject discussed, and a vote taken, in which he counted himself as but one. But he always seems to have considered that he had the power to decide against the opinion of his Cabinet. . . . When there were differences of opinion, he aimed to produce a unanimous result by discussion, and almost always succeeded. But he admits that this practice made the Executive, in fact, a directory."¹ Buchanan had great difficulty in the management of his Cabinet because of his weakness of character, but Lincoln always dominated his Secretaries. The Emancipation Proclamation was prepared without their advice, and merely submitted to them for suggestion.² Andrew Johnson's difficulties with Congress led to serious encroachments by that body upon the rights of the Executive, and the Tenure-of-Office Acts were intended to deprive him of control over his own executive agents. President Wilson has very clearly stated the advisory position of the Cabinet. "Self-reliant men," he writes, "will regard their Cabinets as Executive Councils; men less self-reliant or more prudent will regard them as also political councils, and will wish to call into them men who have earned the confidence of their party. The character of the Cabinet may be made a nice index of the theory

¹ Woodburn, p. 191.

² Stevens, *The Sources of the Constitution of the United States in Relation to Colonial and English History*, p. 168.

of the presidential office, as well as of the President's theory of party government, but the one view is, so far as I can see, as constitutional as the other."¹

In recent years, especially since the Spanish-American War, the tendency has been to accord more rights to the Cabinet by the Chief Executive, while attempted congressional interferences, such as the Tenure-of-Office Acts, have been withdrawn. The growing power of the President has led to much discussion of the executive prerogatives and of the relations of the Cabinet to Congress. The advisability of giving seats in Congress to the cabinet officers has received some attention and various propositions have been advanced on the subject. Those who favor such a procedure contend that should the members of the Cabinet be given seats in Congress, with power to introduce and debate upon measures but with no power to vote, such a change would make the passage of proper departmental legislation more easy. The President, since the Federal Administration began, has expressed his wishes directly to Congress by messages; indirectly, in person, or through his executive officers to the individual members of the Senate or the House. In the records of the First Congress are instances in which the President himself and even members of his Cabinet appeared in Congress to advocate measures. On the 22d of August, 1789, President Washington and the Secretary of War came to the Senate, bringing a treaty with the Southern Indians, which the Senators were apparently expected to consent to simply

¹ *Constitutional Government in the United States*, p. 77.

on hearing it read. When the whole matter was postponed and referred to a committee, the President, records Senator Maclay,¹ "wore an aspect of stern displeasure," and withdrew at length "with a discontented air," and, adds Maclay naïvely, "had it been any other man than the man whom I wish to regard as the first character in the world, I would have said, with sullen dignity." When the President appeared again in the Senate on Monday, the 24th, he had recovered his equanimity, and was "placid and serene," consenting to amendment of articles of the treaty.²

It was the custom of Washington and it has been the practice of President Wilson to appear before Congress and deliver his messages on important subjects in person. Should the President so desire, there would seem to be no constitutional reason why he should not enter into debates in Congress upon pending legislation, although there exist *many* extra-legal reasons against such practice. If the President in person could introduce bills and participate in debates in Congress, there would seem to be no constitutional reason why he should not so act through his executive agents, the members of the Cabinet. On the other hand, through the consequent right of members of Congress to question cabinet officers officially appearing in Congress as to administration policies, the President might find himself seriously hampered in both his legislative and executive programme.

¹ *Journal of William Maclay*, p. 135.

² Rowland, *Life and Correspondence of Charles Carroll of Carrollton*, vol. II, p. 137.

This question of giving to members of the Cabinet some individual and definite relation to Congress has been considered from time to time by political theorists and in the public press. At present, however, it would seem that the President is able without difficulty to exert upon Congress the necessary influence for the passage of party measures by the means at present existing, and it seems doubtful whether any change in this respect is likely to occur. I am inclined to the opinion that the presence of the Cabinet in Congress would seriously interfere with the power of the Executive.

President Wilson has followed the practice in cabinet meetings of having each department represented. In the absence of the Secretary, an assistant secretary or other designated official has appeared to represent the department, but this is in no way a radical departure from the previous practice. The Vice-President has never been considered a member of the Cabinet. From certain points of view, it would be a most excellent modification of the present practice if the Vice-President should be admitted to the regular meetings wherein are discussed the executive policies of the Government, and such a procedure has from time to time been considered. In the main, however, the status of the Cabinet as a council has undergone little change since the days of President Johnson, and although its powers and relations present a field for much interesting speculation, as long as our Government retains its present form the Cabinet will probably remain in its position as an unofficial advisory body, whose influence on general

executive policies will depend upon the character of its members and the personal force of the President. As to the relation of the Vice-President to the Cabinet, the Constitution provides that the Vice-President shall be President of the Senate, and that he shall have no vote unless the Senate be equally divided.¹ Article I deals with the legislative powers, while Article II deals with the executive powers. The executive power is vested in the President alone, and the exclusion of the Vice-President from the Cabinet seems to be due to the theory that during the life of the President the Vice-President's executive potentialities are dormant and that he has no duties except as President of the Senate, of which he is a constitutional part.

In the beginning there was considerable discussion as to the status of the Vice-President and his relation to the Government. We are again indebted to Senator Maclay for light on this subject. Senator Maclay was a Democrat and began to differ with the Federalists very early in the first session of the Senate. He boldly objected to the presence of the President in the Senate while business was being transacted and opposed any augmentation of the power of the Executive. According to him, John Adams in the session of April 25, 1789, said to the Senate, "Gentlemen, I do not know whether the framers of the Constitution had in view the two Kings of Sparta or the two Consuls of Rome when they framed it; one to have all the power while he held it, and the other to be nothing. Nor do I know whether the

¹ Art. I, sec. 3, clause 4.

architect that formed our room and the wide chair in it (to hold two, I suppose) had the Constitution before him. Gentlemen, I feel great difficulty how to act. I am possessed of two separate powers, the one *in esse* and the other *in posse*. I am Vice-President. In this I am nothing, but I may be everything. But I am President also of the Senate. When the President comes into the Senate, what shall I be? I cannot be [President] then. No, gentlemen, I cannot, I cannot.”¹

Senator Elsworth, continues Maclay, thumbed over the sheet Constitution and turned it for some time. At length he rose and addressed the Chair with the utmost gravity. “Mr. President, I have looked over the Constitution [pause], and I find, sir, it is evident and clear, sir, that wherever the Senate are to be, there, sir, you must be at the head of them.” The Senate itself answered the Vice-President’s query, and ever since the Vice-President has remained President of the Senate alone, and has had no part in the cabinet councils or the work of the Executive.

Adams, however, fought hard to establish the position of the Vice-President as an executive officer, and Maclay narrates many interesting and often amusing happenings in the Senate before the executive notion was driven from the mind of the presiding officer. He signed the proceedings of the Senate at first as “Vice-President,” and this procedure was the subject of much debate in and out of the Senate. The distinguished Robert Morris, then Senator from Pennsylvania, thought

¹ *Journal of William Maclay*, p. 3.

this style of signature correct; Senator Carroll, of Maryland (the "Signer"), said he thought it was "a matter of indifference," but Maclay rose in the Senate and said, "The very term Vice-President carried on the face of it the idea of holding the place of the President in his absence; that every act done by the Vice-President as such implied that when so acting he held the place of the President." Seeing the Vice-President "willing to bear me down," Maclay continued, "Sir, we know you not as Vice-President within this House. As President of the Senate only do we know you." ¹

Another discussion of the matter came up when the oath of office was administered to Adams by Senator John Langdon, of New Hampshire. The minutes of the Senate read: "Mr. Langdon administered the oath to the *Vice-President*," and this started anew the controversy as to the position of that official. All this discussion was concurrent with that as to the titles of the various officials, and it is strange to us now to find Senators Grayson, of Virginia, and Carroll, of Maryland, opposing all forms of titles, while the New England Senators favored them. For a time it seemed as if the President might be styled, "His Highness the President of the United States and Protector of the Rights of the Same," or "Elective Majesty." In those days when the terms of the Constitution were being defined and the experiment of democracy was for the first time being tried, the debates of Congress are most interesting and instructive. Maclay never intended

¹ Maclay, *Journal*, p. 40.

his "Journal" to be published. It is, therefore, one of the most interesting documents of the time, and well worth reading. I cannot resist the temptation to conclude this chapter by a quotation from Maclay as to his views of the value of "The Federalist" and even of the Constitution itself. He writes, on June 14, 1789: "My mind revolts, in many instances, against the Constitution of the United States. Indeed, I am afraid it will turn out the vilest of all traps that ever was set to ensnare the freedom of an unsuspecting people. Treaties formed by the Executive of the United States are to be the law of the land. To cloak the Executive with legislative authority is setting aside our modern and much-boasted distribution of power into legislative, judicial, and executive — discoveries unknown to Locke and Montesquieu, and all the ancient writers. It certainly contradicts all the modern theory of government, and in practice must be tyranny. Memorandum! Get, if I can, The Federalist without buying it. It is not worth it." ¹

¹ *Journal*, p. 75.

CHAPTER V

STATUS OF THE HEADS OF THE EXECUTIVE DEPARTMENTS INDIVIDUALLY

THE heads of the executive departments are the executive agents of the President. Although the Senate participates in their appointment, it is now settled that the power of removal is vested in the President alone, and, with certain limitations, they are responsible to him alone. They are under no direct responsibility to Congress, except when special duties are laid upon them, and their relations to the nation at large arise only by the possibility that under certain remote contingencies they may be called upon to exercise the presidential functions for a limited period.

The relations of the heads of the departments to the President have been defined from time to time by the Supreme Court. The questions decided have been of a limited nature, but in a general way the law is clearly settled. The President acts through the heads of the several departments, in relation to the subjects appertaining to their respective duties.¹ It follows from this that the act of a department is deemed to be the act of the President.

In the case of *Wilcox v. Jackson*, 13 Peters, 513, Mr. Justice Barbour in discussing an act of the Secretary of

¹ *Williams v. United States*, 1 Howard, 298.

War, said (at page 513): "The President speaks and acts through the heads of the several departments in relation to subjects which appertain to their respective duties. Both military posts and Indian affairs, including agencies, belong to the War Department. Hence, we consider the act of the War Department, in requiring this reservation to be made, as being in legal contemplation the act of the President, and, consequently, that the reservation thus made was in legal effect a reservation made by the President within the terms of the act of Congress."

This principle was approved in *Hegler v. Faulkner*, 153 U.S. 117, when acts of the Indian department were held to be acts of the President.

This applies only to matters of administration, for where the President acts in a judicial capacity, it must appear that he acted on the matter himself. This was stated by Chief Justice Waite in the case of *Dunkle v. United States*, 122 U.S. 543, where the approval by the President of the finding of a court-martial was in question.

In the case of *Kendall, Postmaster-General of the United States v. United States*, 12 Peters, 524, the power of the executive department heads was discussed. Kendall, the Postmaster-General, refused to permit payment of certain money allowed by his predecessor to contractors for work done for the department. These contractors, therefore, secured the passage of a bill in Congress directing payment, and later the matter was heard on application for a writ of *mandamus*. Mr. Justice Thompson

said (at page 610) that the granting of this writ did not involve an interference with the executive power of the President. "The executive power is vested in a President, and as far as his powers are derived from the Constitution, he is beyond the reach of any other department, except in the mode prescribed by the Constitution through the impeaching power. But it by no means follows that every officer in every branch of the department is under the exclusive direction of the President. There are certain political duties imposed upon many officers in the executive department, the discharge of which is under the direction of the President. But it would be an alarming doctrine that Congress cannot impose upon any executive officer any duty they may think proper which is not repugnant to any rights secured and protected by the Constitution, and in such cases, the duty and responsibility grow out of and are subject to the control of the law and not to the direction of the President. And this is emphatically the case where the duty enjoined is of a mere ministerial character." The court intimated that the President could not refuse to allow the action ordered by Congress or restrict it by reason of his power as Executive.

The general powers of the heads of departments are those necessary to the proper discharge of their duties. The head of a department has the same power as his predecessors to continue an act relating to the business of the department.¹ When required to give information on any subject he may do so by acting through his sub-

¹ *United States v. MacDaniel*, 7 Peters, 13.

ordinates.¹ He need not show statutory authority for every act done. There are numerous instances which cannot be anticipated by statutory provision in which he must exercise his discretion.² Courts cannot usually call upon heads of departments to answer in relation to official acts. The court said, in *Decatur v. Paulding*, 14 Peters, 522, that many acts required of the heads of the executive departments required use of discretion, and where not purely ministerial were not subject to order of the courts. A payment of a pension granted by Congress was here refused by the Secretary of the Navy, and the refusal sustained, although the law of *Kendall v. United States* was held good.

Regulations of the executive departments have the force of law unless in conflict with acts of Congress,³ and regulations prescribed by the heads of departments under congressional authority may lawfully support acts done in accordance therewith.

The position of the heads of the executive departments is summed up in Cooley's Blackstone's Commentaries (book 1, pages 231 to 236). He there states: "The President, not the Cabinet, is responsible for all the measures of the Administration, and whatever is done by one of the heads of departments is considered as done by the President, through the proper executive agent. In this fact consists one important difference between the Executive (King) of Great Britain and of

¹ *Miller v. Mayor of New York*, 109 U.S. 394.

² *United States v. MacDaniel*, *supra*.

³ *United States v. Symonds*, 120 U.S. 49.

the United States; the acts of the former being considered as those of his advisers, who alone are responsible therefor, while the acts of the advisers of the American Executive are considered as directed and controlled by him."

This responsibility of the President arises from his investment by the Constitution with the executive power. His control or power of direction over the executive officers arises from his power of removal rather than from his power of appointment. Since the President's control over his Cabinet depends upon his power to remove any of the heads of the departments, some remarks concerning this power of removal are necessary in considering the status of those heads of departments.

The presidential power of removal is so briefly and well set forth in Goodnow's "Comparative Administrative Law" (vol. I, p. 64) that it will best serve our purpose to quote what the President of Johns Hopkins University says:—

"The Constitution gave the power of removal to no authority expressly. The question came up before the First Congress in the discussion of the act organizing the Department of Foreign Affairs. Although there was a difference of opinion in the Congress as to who under the Constitution possessed this power, it was finally decided by a very small majority that the power of removal was a part of the executive power and therefore belonged to the President. This was the recognized construction of the Constitution for a great number of years, although it did not meet with the approval of

some of the most eminent statesmen. (This construction of the Constitution was approved by the United States courts in *United States v. Avery*, Deady, 204.) After more than three quarters of a century Congress deliberately reversed this decision and by the Tenure-of-Office Acts of 1867-69 (later incorporated in the Revised Statutes as sections 1767-69) decided that the Constitution had not implicitly or expressly settled this point, and that Congress was therefore the body to decide who possessed the power of removal. Congress then decided that the power of removal of Senate appointments belonged to the President and the Senate. (This was constitutional, *United States v. Avery*, Deady, 204.) For twenty years this was the law of the land, though no one was able to explain exactly what the Tenure-of-Office Acts meant, on account of the obscurity of their wording, but finally, in 1887, Congress repealed them. The result is that the early interpretation of the Constitution must be regarded as the correct one at the present time. That is, the President alone has the power of removal of even Senate appointments. Though the Tenure-of-Office Acts had the effect of temporarily weakening the power of the President, the complete power of removal had existed so long as to determine the position of the President in the National Government, and has been of incalculable advantage in producing an efficient and harmonious national administration. The benefits which followed the interpretation of the First Congress on this question were unquestionably the reason why the Tenure-of-Office Acts were

finally repealed. From the power of removal has been evolved the President's power of direction and supervision over the entire national administration. To it is due the recognition of the possession by the President of the administrative power."

The proceedings in the First Congress to which Dr. Goodnow refers are set forth in full in the journals both of William Maclay, Senator from Pennsylvania, and of John Adams, then Vice-President, and the importance of the decision that the President alone possessed the power of removal cannot be overestimated. The decision was not only important to the Executive, but was a definite delimitation of the power of the Senate, which at the first session consisted of not more than eighteen members, and which showed a considerable tendency to become unduly powerful as an advisory council to the President. The bill for organizing the Department of Foreign Affairs was discussed on the 14th of July, 1789. This bill, drawn by Madison, who was then in the House of Representatives, provided that the members of the new department "shall be appointed by the President, by and with the advice and consent of the Senate, *and to be removable by the President.*" Senator Maclay objected strongly to this power of removal being given to the President alone, declaring that "the depriving power should be the same as the appointing power." The Senate was equally divided on the question, nine for and nine against the President's "unqualified power of removal," and Adams, as President of the Senate, decided in favor of the President's power.

Maclay considered this a great gain for what he called the "Court Party," and an attempt to destroy the Senate.¹ Charles Carroll of Carrollton, Senator from Maryland, spoke strongly in favor of the President's power of removal. "The burden of his discourse seemed to be the want of power in the President, and a desire of increasing it."² The Senators seemed fully to realize the importance of their decision in the power of removal, and Adams gives a digest of Charles Carroll of Carrollton's argument which is noteworthy: "The executive power is commensurate with the legislative and judicial powers. . . . The same power which creates must annihilate. . . . If a minister is suspected to betray secrets to an enemy, the Senate not sitting, cannot the President displace nor suspend? The States-General of France demanded that offices should be held during good behavior. It is improbable that a bad President should be chosen,—but may not bad Senators be chosen? Is there a due balance of power between the executive and legislative, either in the General Government or State Governments? [Montesquieu quoted here] English liberty will be lost when the legislative shall be more corrupt than the executive."³ This outline of Carroll's argument is enlightening as to the uncertainty that existed in those days as to the future of the new Government, even in the mind of one who had signed the Declaration of Independence. The President's power of removal thus secured has proved not only a great source

¹ *Journal of William Maclay*, p. 116.

² *Ibid.*, p. 113.

³ *Works of John Adams*, vol. III, pp. 408–12.

of indirect influence to the President over Congress, but, as Dr. Goodnow has said, is the basis of his administrative power.

The passage of the Tenure-of-Office Acts was caused by the desire of Congress to prevent the removal of Secretary Stanton by President Johnson and arose from the bitter differences of the President and Congress on the subject of Reconstruction. Congress deprived the President of many of his constitutional prerogatives and attempted to change the system of government to a form of parliamentary responsibility to Congress. This perversion of the provisions of the Constitution did not, however, long continue, and to-day Congress has little direct power over the heads of the departments. It may impose certain duties of a limited nature upon those who are heads of departments, and since they are officers of the United States, it would seem that they are liable to impeachment. In 1876, Secretary of War Belknap was impeached, but resigned before charges were formulated. It is unlikely that such proceedings will be frequent, since the only result could be removal of the impeached officer. It may be said that the cabinet officers have no direct relation to Congress, and are in no general way under its direction. In the same way, it is true that the heads of the executive departments have no direct relation to the nation at large, aside from their responsibility as private persons to the courts, except as they may be called upon to perform the duties of President.

Although no case has occurred in the history of the

Republic in which such a state of affairs has existed, the matter of presidential succession of the Cabinet is worthy of careful notice. It is provided by law that, in case of inability of both President and Vice-President to perform the duties of the office of President, the executive functions shall be exercised by one of the heads of the executive departments. The Revised Statutes (sections 146-50) provided for proceedings in case of vacancy in the office of both President and Vice-President, and for an election to fill the vacancies. The method there proposed required that in case of removal, death, resignation, or inability of both the President and Vice-President, the President of the Senate, or, if there were none, then the Speaker of the House of Representatives, for the time being, should act as President until the disability should be removed or a President elected. It was not contemplated that this interregnum should be of long duration, for the law (passed March 1, 1792) required that, whenever the offices of President and Vice-President should both become vacant, the Secretary of State should forthwith cause a notification to be made to the Executive of every State, requiring that electors of a President and Vice-President be appointed or chosen in the several States. If the first Wednesday in December were two months distant from the time of the notification, the electors were to be appointed or chosen within thirty-four days preceding such first Wednesday in December. If there should not be the space of two months before the first Wednesday of December, the same date in the year next ensuing was to be

set as the time for the meeting and voting of the electors; but in this last case, if the term for which the President and Vice-President last in office were elected would expire on the 3d of March next ensuing, no special election was required.¹ This act was never brought into service, nor the effect of its provisions tested. It presented obvious objections that in the beginning of the Republic were not fully appreciated. It might well occur that the President of the Senate or the Speaker of the House would be members of a party opposed to that of the President or Vice-President, or that these officers, while belonging to the same party, would represent a faction opposed in policy to the former Executive. The disastrous results of a sudden change in the attitude and direction of the Executive need not be commented upon. This old act was of a piece with the early provisions that allowed a President and Vice-President to be elected who belonged to different parties.

The development of the executive power and of the position of the heads of the executive departments is well shown in the Act of January 17, 1886, which repealed the old act for filling the presidential office. This act names as successor to the Presidency, in case of inability of both the President and Vice-President, the Secretary of State, and if there be none, or if he be incapacitated, the Secretary of the Treasury. Under the same circumstances, on inability of this officer, the office is to be filled by the Secretary of War, the Attorney-General, the Postmaster-General, the Secretary of the Navy, or

¹ 1 U.S. Stat. L. 239.

the Secretary of the Interior, in the order named. The Departments of Agriculture, of Commerce, and of Labor, not being at that time created, their heads were not named as possible Presidents. It is usually stated that the order of succession followed that of the establishment in time of the departments, but this statement is based upon the erroneous belief that the Treasury Department antedated that of War. The succession followed, however, the order of precedence that has from the first been recognized among the members of the Cabinet.

By the provisions of this act, the continuance of the policy of the Administration is assured until the election of the next President. The method of such election is not provided for, the act merely stating that if Congress be not at the time in session, or not to meet within twenty days thereafter, the person on whom the presidential duty should devolve shall issue a proclamation convening Congress in extraordinary session, giving twenty days' notice of the time of meeting. The act does not state what Congress is to do if it be in session or at its meeting, and no cause has arisen to test this act in any way.

The act requires that the persons named shall have been appointed by the advice and consent of the Senate to the offices named in the act, possess the requisite constitutional qualifications, and be not under impeachment by the House of Representatives at the time the powers and duties of the office devolve upon them respectively. This last clause is of interest because of its

definite assumption that the members of the Cabinet are liable to impeachment as within the class of "civil officers of the United States" who may be removed from office on impeachment,¹ and for the further recognition of the fact that heads of the departments are among those "other officers of the United States," whose appointment is by the Constitution ² made subject to the advice and consent of the Senate.

¹ Constitution, art. II, sec. 4.

² *Ibid.*, art. II, sec. 2.

CHAPTER VI

ORGANIZATION OF THE EXECUTIVE DEPARTMENTS

HAVING traced the creation and development of the various departments and noted the present status of the executive officers of the Government, we are now in a position to consider the organization and regulations that control actual administration. It will be helpful to take a bird's-eye view of the Federal Executive as a whole before proceeding to consider the typical organization of the departments. At the head of the Federal Executive stands the President alone. The Vice-President has no place in the executive machinery, nor is there any other officer of the Government qualified to act as an assistant President. The Secretary to the President comes nearest of any of the federal officials to holding the place of assistant President, and some holders of this position have cast envious eyes at the title "Assistant to the President." The Secretary to the President is chief of the President's particular executive assistants, and is the gateway of approach through which all must pass who desire to confer with the Chief Executive in person. The Secretary, therefore, occupies a position of extreme importance, and his personality and ability may make or mar the success of his chief's Administration. He is not a member of the Cabinet, although brought into intimate relation with the members of that unofficial body. Since he is really an exten-

sion of the President's own personality, there seems to be no reason for any change in the status that the Secretary to the President now maintains. He is assisted in his work by the executive clerk, the chief clerk, and the various office clerks, stenographers, doorkeepers, messengers, and other *attachés* of the President's office. There are ten members of the President's Cabinet who are heads of the ten executive departments. The following is a bare tabulation of the principal officers or divisions under which the work assigned to the various departments is performed. The names of the various bureaus and divisions of many of the departments are not here set forth, nor is the following summary in any way a complete statement of the agencies through which the Federal Executive acts. The summary, however, will be of great assistance to the general reader by showing in brief space the functions of all the departments, and should I ever give to any body of students an examination upon the subject of the Federal Executive, I should most strongly recommend them to study carefully the following analysis. The ten members of the Cabinet and the chief agencies of the Federal Executive are: —

I. *The Secretary of State.*

The Counselor, Solicitor, the Assistant Secretary, Second Assistant Secretary, Third Assistant Secretary, Director of the Consular Service, Chief Clerk, Chiefs of Bureaus and Divisions.

II. *The Secretary of the Treasury.*

Three Assistant Secretaries, Chief Clerk, Chiefs of Divisions, Comptroller of the Currency, the Treasurer, Commissioner of Internal Revenue, Director of the Mint, Comptrol-

ler of the Treasury, the Auditors for the various Departments, the Register of the Treasury, Bureau of Engraving and Printing, Bureau of the Public Health, Coast Guard Service, Supervising Architects' Office.

III. *The Secretary of War.*

Assistant Secretary, Assistant and Chief Clerk, Chiefs of Divisions, General Staff Corps, the Offices of the Adjutant-General, Inspector-General, Judge-Advocate-General, Quartermaster General, Surgeon-General, Chief of Engineers, Chief of Ordnance, Chief Signal Officer, Bureau of Insular Affairs (Philippine Commission, Porto Rico Government, and Dominican Receivership), Board of Engineers for Rivers and Harbors, Office of Public Buildings, United States Engineer Office, Board of Ordnance and Fortifications.

IV. *The Attorney-General.*

The Solicitor-General, the Assistant to the Attorney-General, Assistant Attorneys-General, Attorneys and Special Assistants, Chief Clerk.

V. *The Postmaster-General.*

The First, Second, Third, and Fourth Assistant Postmasters-General, with the Chief Clerks and forces of their respective offices.

VI. *The Secretary of the Navy.*

The Assistant Secretary, the Aides for Operations, Marine Corps, Personnel, Material, Education, Director of the Navy Yards, Chief Clerk of the Department, the Office of the Admiral of the Navy, the Bureaus of Navigation, Yards and Docks, Ordnance, Construction and Repair, Steam Engineering, Supplies and Accounts, Medicine and Surgery, Office of the Judge-Advocate-General, the General Board, etc.

VII. *The Secretary of the Interior.*

Two Assistant Secretaries, Chief Clerk, the Commissioners of the General Land Office, of the Patent Office, of Pensions, of Indian Affairs, of Education, the Directors of the Geological Survey, the Reclamation Service, and of Mines.

VIII. *The Secretary of Agriculture.*

The Assistant Secretary, Chief Clerk, Solicitor, Chiefs of the Weather Bureau, of Animal Industry, of Plant Industry, of Forest Service, of Chemistry, of Soils, of Entomology, etc.

IX. *The Secretary of Commerce.*

The Assistant Secretary, Chief Clerk, Director of the Census, Commissioner of Corporations, Chief of the Bureau of Foreign and Domestic Commerce, and the Directors or Commissioners of the Bureaus of Standards, Fisheries, Lighthouses, and Navigation. The Superintendent of the Coast and Geodetic Survey.

X. *The Secretary of Labor.*

The Assistant Secretary, the Chief Clerk, the Commissioners of Immigration, of Naturalization, and of Labor Statistics, the Chief of the Children's Bureau.

In a general way the departments are organized upon the same plan, and are subject to similar regulations for the conduct of their business, but from the nature of their work and the mode of their development it necessarily results that marked differences exist in the internal structure of each. In the early days, the routine business was apportioned among the several clerks, while the Secretary and chief clerk of each department held the position of executive and directing officers. In this way one clerk would have entire charge of a certain division of work, under the supervision of the head of the department and the chief clerk, who held the post of general superintendent of all the subordinate officers and employees. As the business of the department grew, it was necessary to increase the force employed on the separate divisions of the work, and in this way developed the present system of coördinate subdivisions that exists, under different names, in all of the departments. The Secretary and assistant secretaries at the head of the department, with a chief clerk having direct supervision of all inferior clerks, form the executive management of

the department. The subdivisions of each department are in a similar manner under the direction of an officer denominated Director, Commissioner, Chief of Bureau, Chief of Division, or Superintendent, to agree with the designations applying to the subdivisions in each of the departments. In the Department of State these subdivisions are termed Bureaus, and the names of the Bureau of Accounts, the Consular and the Diplomatic Bureaus, indicate the duties of these subdivisions. In the Treasury Department these unitary organizations are simply termed Divisions, with Chiefs of Divisions, while the Bureaus of the Department of Commerce are most frequently in charge of Commissioners or Directors.

The heads of these subdivisions are frequently aided in their executive duties by chief clerks or assistants, whose position in the subdivision corresponds somewhat to that held by the Chief Clerk of the Department.

The Treasury Department differs from the typical organization in that the Comptroller of the Treasury, the Register, the Treasurer, the Supervising Architect, and the other officers, like the Director of the Mint and the Commissioner of Internal Revenue, occupy a position of greater independent importance than that held by the chiefs of the ordinary bureaus or divisions, corresponding more to the various commissioners in the Department of Commerce. The regular work of the departments is conducted in these divisions by a great company of clerks whose duties and responsibilities vary in a great degree. In addition to these clerks, there are the miscellaneous employees of all sorts, — watchmen,

laborers, messengers, — that are essential to the conduct of the great business organizations. A clear comprehension of the detailed organization of each department can be got only from an examination of the register of each department, but is not essential to a general understanding of the department management. It will be instructive, however, to examine in detail the register of some of the departments in order to see the general plan. The State Department has, perhaps, the simplest organization, and will, in a limited way, serve as a typical illustration. Its organization is as follows: —

Counselor for the Department of State.

The Assistant Secretary.

Second Assistant Secretary.

Third Assistant Secretary.

Director of the Consular Service.

Chief Clerk.

Solicitor.

Foreign Trade Advisers.

Chief of Bureau of —

Accounts and disbursing clerk;

Appointments;

Citizenship;

Consular;

Diplomatic;

Indexes and Archives;

Rolls and Library.

Chief of Division of —

Far-Eastern Affairs;

Information;

Latin-American Affairs;

Mexican Affairs;

Near-Eastern Affairs;

Western-European Affairs.

Translators.

Assistant Solicitors.

Private Secretary to the Secretary of State.

Law Clerks.

Confidential Clerk to the Secretary of State.

It would be extremely tiresome to go through all the departments in this manner, and the general organization of each will appear from the duties it performs.

The character of the duties assigned to the assistant secretaries differs somewhat in the various departments, but as a rule they have entire direction of specified branches of the work and in many departments enjoy a great measure of independence.

The duties of the chief clerk are practically the same in every department. He is the executive officer of the department under the Secretary, and his position is one of great importance. It was a matter of frequent occurrence in the early days of the Government for the chief clerk to become Acting Secretary during the temporary absence or upon a vacancy in the office of the Secretary. At present the chief clerk has the general supervision of the clerks and employees, and of the business of the department. Each clerk is required to record the time of his daily arrival and departure from the department, and at the end of the month these reports are filed with the chief clerk. It is the rule in most of the departments that no clerk is allowed to leave the building during office hours without express permission of the chief clerk, who is thus in a position to know at all times what force he has available for the extra work that the exigencies of the service may at any time call for. After the daily mail is opened and indexed by the proper persons, it is the practice in most of the departments to have it read by the chief clerk and distributed by him to the assistant secretaries, or otherwise dealt with, and in the same way

all letters written by the department come under his supervision. He has also supervision of the various publications of the department and control and oversight of its property.

The great body of clerks in the various bureaus and divisions are all subjected to some sort of examination before being employed by the Government, and a large part of them are subject to the rules of the so-called "classified service." This classification has steadily grown in importance. Sections 163 and 164 of the Revised Statutes provided for the arrangement of clerks in four classes, distinguished as the first, second, third, and fourth class, and for the examination and qualification of these clerks before their appointment.

These sections are superseded by the Civil Service Act of January 16, 1883,¹ which makes more comprehensive provisions for examinations for testing the fitness of applicants for the public service, and for appointments and promotions as the result of such examinations. By this act the United States Civil-Service Commission was established, to consist of three commissioners, not more than two of whom shall be adherents of the same party. These commissioners are to be appointed by the President by and with the advice and consent of the Senate. The act retains the old classification of clerks, and makes minute regulations as to the manner and modes of conducting examinations, and for making appointments and promotions from the lists of successful competitors. It is only necessary for our purpose to note

¹ 22 U.S. Stat. L. 403.

that some examination is necessary for almost all persons in the government service, and that for those classifications of clerks that have been placed by the President or by the law itself in the classified service, the regulations are carefully provided in order to secure the most efficient service to the Government.

There were 395,460 positions in the executive civil service on June 30, 1912, according to statistics based upon reports to the Commission, of which 236,061 were classified subject to competitive examination under the civil-service rules. The number of classified positions was increased by about 20,000 by the classification of artisans in the navy-yard service under executive order of December 7, 1912. Persons employed merely as laborers or workmen and persons nominated for confirmation by the Senate are exempted from the requirements of classification. Within these limits certain classes of positions are excepted from examination — among them, Indians in the Indian service, attorneys, pension examining surgeons, field deputy marshals, and a few employees whose duties are of an important confidential or fiduciary nature. By an executive order of October 15, 1912, the President classified all fourth-class post-offices not before classified, the number being 36,236.

Various examinations are held in every State and Territory at least twice a year. The examinations range in scope from technical, professional, or scientific subjects to those based wholly upon the physical condition and experience of the applicant, and in some cases do not require ability to read or write. During the fiscal

year ended June 30, 1912, 33,240 persons were appointed through examinations, including 12,807 navy-yard employees.

The salaries of all persons in the service of the departments are provided by law, from those of the Secretaries to those of the lowest grade of laborers. It was provided that the heads of departments should receive an annual emolument of \$10,000,¹ but by the Act of January 20, 1847, this was reduced to \$8000, and by the Act of March 4, 1911, increased to \$12,000, which is the present salary of all cabinet officers. The assistant secretaries receive from \$4000 to \$6000. The clerks of the fourth class are allowed \$1800, while those of the third, second, and first classes receive respectively \$1600, \$1400, and \$1200. The lowest grade of employees are classed as laborers and are paid \$720. The salaries of chief clerks, commissioners, and others vary from \$2000 to \$6000.

Many details of general departmental regulations are provided by the Revised Statutes of the United States, but the only remaining matter of interest is the provision that legal advice is to be had by the heads of the departments only from the Attorney-General.² The remaining matters of organization and regulations are best seen by examining the departments separately.

I am indebted to Hon. John A. McIlhenny, President of the United States Civil Service Commission, for the following information as to the civil service on February 15, 1915. The extent of the executive civil service is as

¹ U.S. Rev. Stat., sec. 160.

² *Ibid.*, sec. 187.

follows, based upon reports furnished by the several departments, to the Commission. Owing to inaccuracies in this method of reporting and inadvertent omissions, the figures must be accepted as only approximate. On June 30, 1914, there were 482,721 officers and employees in the executive civil service. Of these, 292,460 held positions subject to competitive examination under the civil-service rules, an increase of 9863 during the year. Of the 190,261 persons whose positions are not subject to competitive examination under the civil-service rules, 10,652 are presidential appointees, 8650 being postmasters of the first, second, and third classes; 5042 are clerks in charge of contract postal stations; 73,000 are clerks in third and fourth class post-offices; 7910 are mail messengers; 12,532 are star-route, steamboat, and screen-wagon contractors; 4641 are pension examining surgeons; 28,605 are engaged on the Isthmian Canal work, chiefly as laborers and minor employees; 729 are employees of the Department of Commerce, mostly of the Census Bureau; and 26,339 are unclassified laborers not elsewhere herein enumerated, of whom 6500 are subject to tests of physical fitness under labor regulations. The remaining 20,811 are excepted from examination under Schedule B of the civil-service rules, of whom 1069 are employed in Washington and the others in branches of the field service. Few important positions are excepted from competitive examination under Schedules A and B. Their great variety will be seen by reference to those schedules.

CHAPTER VII

FUNCTIONS OF THE EXECUTIVE DEPARTMENTS IN MAINTAINING A "MORE PERFECT UNION" THE DEPARTMENTS OF STATE, THE TREASURY, AND THE INTERIOR

WE have considered the constitutional authority for the executive administration, and the manner in which Congress has from time to time provided for the needs of this administration by the establishment of the various departments. We have also examined the status of the heads of the departments, collectively as an Advisory Council, or Cabinet, and individually as executive agents in control of separate divisions of the administration. I have attempted to give some idea of the general organization of these independent divisions. In the remaining chapters, I shall endeavor to show the scope of the Government's administration, and the methods it employs in fulfilling its functions. In order to do this, we will take up the departments separately, and indicate what their duties are and how discharged. It will be impossible to go into the historical development of the various functions, for this would include a large part of the history of the nation, and it will, therefore, be necessary to pass over many things that invite careful study. The circumstances attending the various treaties concluded under the direction of the Department of State; the results of the many arbitrations it has ar-

ranged; the results of the work of the War Department in engineering matters; the results of the labors of the Geological and Coast Survey, — all these fill many volumes of reports and furnish much matter of interest to the student of history and government. We shall have to pass them by, however, with such brief notice as will suffice to make them intelligible as illustrations of what has been accomplished by the working of the administrative machine whose mechanism we are examining.

We have already seen that there are ten executive departments, in the order in which they are at present ranked,¹ — State, Treasury, War, Justice, Post-Office, Navy, Interior, Agriculture, Commerce, Labor. Each of these executive departments performs certain functions of the Federal Executive. It is impossible to make a rigid classification of the functions of the Executive they perform, but it has seemed to me, taking the preamble to the Constitution as a guide to the functions of the Executive, that the work of these ten departments falls into four divisions. The Departments of State, the Treasury, and the Interior deal with foreign and domestic relations and the finances of the Government itself. I have, therefore, considered them together under the title of this chapter, "Functions of the Executive Departments in Maintaining a 'More Perfect Union.'" The work done by these three departments is necessary for the existence of the United States as a nation; it *must* have funds; it *must* have dealings with its neigh-

¹ *Congressional Directory*, December, 1914.

bors; and it *must* look out for its public lands and other internal matters. The Departments of War, the Navy, and Justice are all for the purpose of "insuring domestic tranquillity." The first two departments are primarily for the purpose of providing a common defense against foreign enemies, although the War Department in the Civil War, and in the occasional use of regular troops in case of internal disorder, protected the people of the nation from internal disintegration and turmoil. The Department of Justice devotes itself to the preservation of that portion of domestic tranquillity which is not provided for through the police and legal departments of the States. I shall discuss these three departments in the same chapter. The Departments of Agriculture, of Commerce, and of Labor will be considered under a chapter entitled, "Functions of the Executive Departments in 'Promoting the General Welfare.'" We have thus classified all of the ten departments except that of the Post-Office. I have already pointed out that as a purely governmental function, the Post-Office is an anomaly. It, however, in terms of the preamble to the Constitution, devotes itself most certainly to securing for the people of the United States certain of "the blessings of liberty." Unlike the Departments of Agriculture, of Commerce, and of Labor, it does not promote the general welfare of any one element of national prosperity. It is not necessary like the Departments of State, the Treasury, and the Interior, for the maintenance of the Government itself, nor is it necessary, like the Departments of War, the Navy, and Justice, for the

protection either of the Government or the individual citizen. Primarily, with its means of transporting intelligence and its banking facilities of money orders and savings banks, it is a convenience to the individual citizen as well as to the Government itself, and may be regarded more as a "blessing of liberty" than as an essential to securing or protecting the Union, a luxury of liberty rather than a necessity of liberty.

We will first consider the foreign relations of the United States as cared for by the State Department.

The Government of the United States is in intimate relation with twenty American Republics, and there are at Washington more diplomatic representatives of foreign countries than in any other capital. In the period from 1896 to 1909 the foreign trade of this country had been growing from \$1,662,331,612 to the enormous total of \$2,950,275,817, an increase of seventy-eight per cent. This increase in trade alone greatly added to the work of the diplomatic and consular offices of the Department. The war with Spain had marked a new epoch in the history of American foreign relations, and the State Department was called upon to deal with a multitude of questions with which before it had not been concerned. A reorganization of the department was imperatively demanded by reason of its greatly increased functions. The Hague Conferences, boundary adjustments, arbitrations, and the efforts of the United States to improve conditions in Central America were among the active duties of the department. The increasing number of questions arising from the development of Mexico and

the protection of interests of nearly forty thousand of our citizens who had temporarily taken up their residence and invested nearly \$1,000,000,000 of American money in that country, together with the general increase in the work of the department, caused its reorganization under the direction of Secretary Root in 1909. In this reorganization there were created in the department a number of new officials and divisions. The posts of Counsel for the Department and Resident Diplomatic Officer were posts of importance that were added to the department. The post of Counselor, under the Administration of President Wilson and the secretaryship of Mr. Bryan, assumed added importance in the fact that by the practice adopted, the Counselor, rather than the First Assistant Secretary of State, becomes Acting Secretary of State in the absence of that officer. A Division of Western-European Affairs, one of Near-Eastern Affairs, and various other divisions and bureaus were created in the department.

Aside from the time and attention required by his general duties to the President, as a member of the Cabinet, involving many questions of domestic policy, the Secretary of State is primarily responsible for the conduct of foreign relations. He has charge of all matters relating to the public Ministers and Consuls of the United States, and with the representatives of foreign powers accredited to it, and to negotiations of every character relating to foreign affairs. He is also the medium of correspondence between the President and the chief executives of the several States, and has cus-

tody of the Great Seal, which he affixes to all executive proclamations, to various commissions, and to warrants for the extradition of fugitives from justice. He is also the custodian of the treaties made with foreign states, and of the laws of the United States, and the Department of State grants and issues passports and exequaturs to foreign consuls in the United States. The immigration into this country increased from 343,267 in 1896 to 751,786 in 1909. The emigration increased from 329,558 in 1896 to 586,452 in 1909. Every immigrant coming to this country, and every American citizen going to a foreign country, in one way or another is likely to cause work for the Department of State.

The personnel of the organization of the Department of State has been given in detail in Chapter VI. The work of the department is chiefly conducted through its four principal divisions, — Latin-American Affairs, Far-Eastern Affairs, Near-Eastern Affairs, Western-European Affairs, — its Division of Information, the Diplomatic Bureau, the Consular Bureau, and the Bureau of Citizenship. Bureaus of Appointment, of Indexes and Archives, of Accounts, of Rolls and Library, and of Information are subsidiary elements in the work of the department. In addition to the general direction of the Department of State, the Secretary personally receives the representatives of foreign countries for the discussion of diplomatic business and is in touch with the Committee on Foreign Relations of the Senate.

The office of the Assistant Secretary, which corresponds to that of Under-Secretary or Vice-Minister for

Foreign Affairs in foreign offices, has also general direction of the department under the Secretary. The practice as to departmental duties varies in different Administrations, but as a general rule the Assistant Secretary does not specialize, but holds himself in readiness to take the place of the Secretary in general matters of direction. The Second Assistant Secretary of State is charged with detailed treatment of diplomatic and political questions, while the administrative work of the diplomatic service as distinguished from the treatment of subjects of international intercourse, is delegated to the Third Assistant Secretary of State. The Counselor devotes himself to the study of pending diplomatic questions, but as I have indicated, under the present Administration, is sometimes called upon to assume the duties of the Secretary in his absence. Before Secretary Lansing succeeded Mr. Bryan, he performed most important functions as Counselor.

The Division of Latin-American Affairs has charge of all diplomatic and consular questions relating to Mexico, Central and South America, and the West Indies. As an index of the amount of its work it may be noted that it annually prepares more than nine thousand communications, such as instructions to diplomatic and consular offices by mail and telegraph, and notes to diplomatic and consular representatives of other governments. It deals with such questions as the obtaining permission in Mexico for the construction of such work as that of the Colorado River projects, the settlement of such mining cases as the Rincon Mine Company's case, enforcement

of the neutrality laws, the release of Americans charged with various offenses, and all matters generally arising in the ordinary intercourse of American citizens and the Mexican Government. In Haiti, the State Department has at times exercised a large sphere of influence, among its most important achievements being that of securing participation of American financiers in the recent financial adjustment of Haitian affairs. In Venezuela there have been such matters as the settlement of the Orinoco Company's cases against Venezuela for \$385,000, pending since 1890, and the settlement of various other claims of American interests. The Division of Latin-American Affairs is one of the most important divisions in the State Department, and will become increasingly important as our relations with Mexico and Central and South America grow stronger.

The Division of Far-Eastern Affairs has charge of matters relating to Japan, China, Siberia, Hongkong, French Indo-China, Siam, the Straits Settlements, Borneo, East Indies, India, and in general the Far East. As examples of subjects studied by the Division of Far-Eastern Affairs there may be cited matters concerning the policy of that division, tending to the coöperation of the United States with the other great Powers in relation to the political integrity of China and the "open door" of equality of commercial opportunity. Such matters as the protection of American missionaries and the general protection of American interests constantly occupy the attention of this division.

The Division of Near-Eastern Affairs relates to Ger-

many, Austria-Hungary, Russia, Roumania, Servia, Bulgaria, Montenegro, Turkey, Greece, Italy, Abyssinia, Persia, Egypt, and colonies belonging to countries of this series. This is naturally a very important division. Railway concessions in Turkey, the diplomatic aspects of the potash controversy with Germany, questions relating to the treatment of American Jews in Russia, and similar matters fall into the province of this division. The remaining division of the State Department is that of Western-European Affairs, and deals with matters relating to Great Britain (Canada, Australia, New Zealand, and British colonies not elsewhere enumerated), Portugal, Spain, France, Morocco, Belgium, the Congo, Switzerland, Norway, Sweden, the Netherlands, Luxemburg, Denmark, and Liberia. All sorts of questions come before this division, but in the main it is sufficient to say that it deals with all international questions between the United States and the countries in that division, relating to the rights of the United States or to the rights of any of its citizens.

The above is, I fear, a not especially interesting description of the functions of the State Department, but it is impossible to condense in a few pages an any more instructive account of its work. There is no department in the Government which deals with more interesting questions. They are most essentially human questions, affecting the relations between nations and individual men, and concerning such dealings only detailed accounts can portray their living interests. The seizure by English cruisers of American vessels as carriers of contra-

band articles during the present European war, the rights of neutral vessels in the North Sea, and hundreds of vital and important questions for the State Department arise from this great international conflict. All I am attempting to do is to indicate in a general way the duties of the department, and it is impossible for me to stray into the alluring realms of diplomatic history. It is not improper to say, however, that although much of great interest has been written of the diplomatic history of this country, there are still unexplored fields in the archives of the State Department inviting the work of the student in American history.¹

The heads of most of the executive departments make their annual reports of the work of their departments to the President, who transmits them to Congress. As I have already pointed out, the Treasury Department in its organization differs in a number of particulars from the departments that were created coincidentally with it, War and State. The management of the finances of the Government seemed to the members of the First Congress and to the men who formulated the plans for the Treasury Department of such great importance that

¹ President Wilson, in Cleveland, on January 29, 1916, stated the policy of the United States as follows: "America has not only to assert her rights to her own life within her own borders, but she has to assert the right of equal and just treatment of her citizens wherever they go. And she has something more than that to insist upon, because she has made up her mind long ago that she is going to stand, so far as this whole Western Hemisphere is concerned, for the right of people to choose their own policies without foreign influence or interference." In the first instance, the carrying-out of this generally accepted policy falls upon the State Department.

Congress was given some control over the Treasury, whereas it had none over the other departments.

The work of the Treasury Department has assumed enormous proportions. This can be noted in no more striking manner than by an examination of the estimates of government disbursements for the fiscal year ending June 30, 1914. In his report for the fiscal year ending June 30, 1912, Secretary MacVeagh placed the above appropriations at \$732,556,023.03. These estimates were exclusive of those for expenditures for the Panama Canal, which were to be paid from bond sales, and those of the postal service, which were to be repaid from postal receipts. The estimated expenditures for the Panama Canal for the same period are \$30,174,432.11. The ordinary receipts during the current fiscal year of 1913 were estimated at \$711,000,000, and the ordinary disbursements at \$670,800,000, showing an expected excess of receipts of \$40,200,000. It may be interesting to notice some of the elements of receipts and some of the elements of disbursements for the year 1913 in order to see from what sources the Government realizes its enormous revenues and for what purposes these moneys are expended. Of these estimated receipts \$328,000,000 were expected from customs; \$297,000,000 from internal revenue taxes, — that is to say from taxes on spirits, oleomargarine, etc.; \$29,000,000, from the tax on the net income of corporations; and \$57,000,000 from miscellaneous sources. Of the estimated expenditures from these receipts, \$177,000,000 was for the civil establishment of the Government, including all expenses of Congress, the

executive departments, etc.; \$158,000,000 for the War Department; \$130,000,000 for the Navy Department; \$18,000,000 for the Indian service; \$22,800,000 for interest on the public debt; and \$165,000,000 for pensions. It will be noted that the amount paid in pensions nearly equals the cost of the maintenance of the civil establishment of the Government.

As to this enormous sum for pensions, it is interesting to note the comment made by former President Taft upon the subject of pensions in his "Popular Government," published by the Yale University Press in 1913. On page 524, he says: "Those pensions are not properly a part of the expense of the military system of the United States and ought not to play a part in determining the expenses of our present army and navy. They are due to our not having an adequate army ready in the past. Certain it is that the larger army and navy we maintain, the less in size will be our pension list after another war, should we have one, because the more adequate provision we make for a prompt and active campaign, the less men we shall enlist and the less their loss of life and limb."

It is necessary to call attention to the above receipts and expenditures of the Government in order that the usual well-informed American may realize that the Treasury Department has much more important duties than the opening of travelers' trunks upon their return from a summer vacation in Europe, or the laundering of bank-notes. The latter function of the Treasury Department has created considerable interest and some

amusement throughout the country; but this reform, by which old notes are literally washed, dried, and ironed, has been estimated to mean a saving to the Government of more than \$500,000 a year.

The principal officers of the Treasury Department are the Secretary of the Treasury and his three Assistant Secretaries, the Comptroller of the Treasury, the Treasurer of the United States, and the Comptroller of the Currency. There are also among the important officers of the department, the Supervising Architect, the Auditors for the various departments, the Register of the Treasury, the Director of the Mint, and the Commissioner of Internal Revenue. By the act of Congress creating the department, the Secretary of the Treasury is charged with the management of the national finances. It is his business to prepare plans for the realization of revenue and for the maintenance of the public credit. He superintends the collection of the revenue, and directs the forms of keeping and rendering public accounts; grants warrants for all moneys drawn from the Treasury in pursuance of appropriations, and for the payment of moneys into the Treasury, and in the form I have indicated above submits annually to Congress estimates of the probable revenues and disbursements of the Government. The work of the department, therefore, consists principally in collecting and disbursing money. It also, through the Mint and the Bureau of Engraving and Printing, issues the coin and notes which are the legal medium of exchange and are commonly called "money."

The revenues of the Government are derived chiefly from the customs duties on articles imported into the United States, and from the taxes upon spirits, tobacco, oleomargarine, etc., known as internal revenue. For the collection of these two sources of revenue, the United States is divided into territorial districts. There are a certain number of internal-revenue districts and a certain number of ports of entry through which goods may be brought into the United States, and where, through the collectors of the port, the customs duties may be paid. The Treasury Department, therefore, has a type of territorial organization, and in this particular it resembles the Department of Justice, which divides the United States into federal districts for the purpose of administering the laws of the United States. At the present time the War Department has a very meager territorial organization. In time I believe that the United States will be divided into military districts resembling those of the corps districts in Germany and other nations that maintain an adequate military establishment, but at the present time it is to be noted that the Treasury Department and the Department of Justice are the only two departments that have divided the United States into districts for the practical purpose of administration.

There are three Assistant Secretaries of the Treasury. All three of these are in charge of various avenues of income and disbursement. The Assistant Secretary in charge of customs, controls all matters pertaining to the customs service. Another Assistant Secretary is in

charge of certain fiscal bureaus and has supervision of all matters relating to the Bureau of the Mint, the Bureau of Engraving and Printing, the Office of the Treasurer of the United States, the Office of the Comptroller of the Currency, the Office of the Comptroller of the Treasury, the Auditors of the several departments, the Register of the Treasury, the Secret-Service Division, the Division of Public Moneys, the Division of Loans and Currency, the Division of Bookkeeping and Warrants, the Bureau of Internal Revenue, the Division of Printing and Stationery, the Division of Mail and Files, and the Office of the Disbursing Clerk. The remaining Assistant Secretary is in charge of certain miscellaneous divisions of the Department and supervises matters relating to the public health service, the Supervising Architect, the selection of sites for public buildings, the revenue-cutter service, life-saving service (the last two were consolidated, January 28, 1915, as the Coast Guard), appointments, and the bond division. If we consider the matters coming under the direction of each of the Secretaries, we shall gain a general understanding of the functions of the Department.

Since the foundation of the Government the question of the tariff has been one of the most important questions of national policy. The necessity for a central government became apparent after the Revolution primarily for a proper treatment of customs duties, and such has been the history of the confederation of many nations. The regulations upon which goods may be imported and exported from one State into another affect

most vitally the business of each of these communities, and after the Revolution there existed a condition in which one of the former colonies of Great Britain was attempting to exact customs duties from another of its fellow colonies. The collection of revenue by customs duties is what is called indirect taxation, and has usually been considered the least painful method of raising revenue for the maintenance of a government. At present the nation is in the midst of the uncertainties which attend the recent revision of the tariff, and upon the question of the fundamental principles which underlie the imposition of customs duties the people of the United States have always been divided. It is without the scope of this book to go into questions of the relative merits of high or low protection to American industries. The tariff law which has recently been adopted by Congress was formulated by the President, with the advice of his Secretary of the Treasury and the leaders of his party in Congress, to meet the demands of the successful party in the last national election. The tariff legislation itself is, therefore, a matter of great executive concern, and the part that President Wilson has played in the present tariff legislation shows in a most marked degree the powerful position of the President under the present party system of government. It is a matter of great interest to note the change in this particular since 1884, when President Wilson published his book "Congressional Government." In that book the President said: "The members of the Cabinet have the privilege of advising him

[the President] as to matters in most of which he has no final action without the concurrence of the Senate, but the gist of all policy is decided by the legislative and not the executive will."

In 1884, before the repeal of the Tenure-of-Office Acts, Congress was the dominating element in the National Government. To-day the President is the dominating influence in the policies of the nation. President Wilson foresaw this when in 1900 he wrote the preface to the fifteenth edition of "Congressional Government," in which, commenting on the increased powers of the Executive caused by the Spanish War, he said: "It may be that the new leadership of the Executive, inasmuch as it is likely to last, will have a very far-reaching effect upon our whole method of government. It may give the heads of the executive departments a new influence upon the action of Congress. It may bring about as a consequence an integration which will substitute statesmanship for government by mass meetings."

As to the actual collection of customs, it is only necessary to say that under the present tariff almost everything that is imported into the United States must pay a tax and that the Treasury Department collects this tax. For this purpose at each port of entry of the United States there exists a complicated organization, the collector of customs, appraisers, surveyors, special agents, customs agents, and vessels of the revenue-cutter service, which see to it that illicit importation of goods is prevented.

The second great source of national income is that from the internal revenue. The tax upon the net income of corporations is the smaller source of this revenue. The larger part of the income of the Government from this source comes from the tax upon all alcoholic productions, tobacco, and oleomargarine. Every distillery in the United States has attached to it revenue officers of the Government, who watch carefully all the processes of production, and see to it that each barrel of whiskey or keg of beer pays its tax to the United States. The illicit distilleries in the mountains of Tennessee and elsewhere have been the subject of novels and are familiar subjects to the general reader. A large part of the activities of the officers, who come under the direction of the Commissioner of Internal Revenue, is devoted to the collection of the tax on oleomargarine. This is an absurd tax and it is to be hoped that in time Congress will repeal it. When it was first discovered that there could be made from the fats of animals a very excellent substitute for butter, great opposition to the sale of the so-called "oleomargarine" arose on the part of the dairymen and the heavy tax upon its sale was imposed. At the present time the Government imposes a tax of 10 cents per pound on all artificially colored oleomargarine, and a tax of one quarter cent per pound on oleomargarine in its natural white or yellow state, not made yellow like butter by the addition of artificial coloration. Anybody, with an old tin can and some hot water and a dark room in a back cellar, can manufacture illicitly what is sometimes called "moonshine but-

ter," and thus defraud the Government out of nine and three-quarters cents a pound. The temptation to do this and the ease with which it can be done is a constant menace to honest dealers in oleomargarine, and it is to be hoped that the laws relating to this form of internal revenue will be modified. In the above manner were obtained most of the revenues of the Government before the passage of the act imposing a tax on personal incomes above certain amounts. It is too early yet to discuss the results of this new tax. ✓

All expenditures are under the direction of the Secretary of the Treasury. The Comptroller of the Treasury and the various auditors of the department supervise these expenditures. The Comptroller of the Treasury prescribes the forms of keeping and rendering all public moneys except those relating to the postal revenues. Certain officers of the Government are bonded as disbursing officers, and only disbursing officers can draw warrants upon the Treasurer of the United States and expend its funds. Upon the application of disbursing officers, the head of any executive department, or other independent establishment not under any of the executive departments, the Comptroller of the Treasury is required to render his advance decision upon any question involving the payment to be made by them or under them, which decision, when rendered, governs the Auditor and the Comptroller in the settlement of the account involving that payment. There are Auditors for the Treasury Department, for the War Department, for the Interior Department, for the Navy Depart-

ment, for the Post-Office Department, and one for the "State and Other Departments," whose duty is to receive and settle all accounts for the departments under their direction.

The Treasurer of the United States is charged with the receipt and disbursements of all public moneys that may be deposited in the Treasury at Washington or in the various subtreasuries in New York and various other large cities, and in the national-bank depositories, and in addition has charge of the actual custody of the moneys in the Treasury. The Comptroller of the Currency has supervision of the national banks: their organization and examination, and the preparation, issue, and redemption of their notes which form a large portion of the circulation of the United States. There has just been enacted by Congress a bill for the reformation of the currency, which provides for a new system of government of the national banks of the country. With the exception of immediate and adequate National Defense, this and the recent tariff legislation form the most important questions at present before the Government for solution, but it is too special a subject for consideration in a book of this nature.

From the above it will be seen that the power of the Secretary of the Treasury is very great. On June 30, 1912, the available balance in the general fund of the United States Treasury was \$167,152,478.99. The working balance in the vaults of the Treasury at this time was over \$98,000,000. The Secretary of the Treasury has charge of the disposition of these funds, and what

disposition of them he authorizes to be made is of the utmost importance to the communities in which he selects depositories and to the country at large. At the close of the fiscal year ending June 30, 1912, there were in actual operation 7394 national banks with an authorized capital of \$1,040,545,435. Its relation to this enormous aggregation of capital whose activities reach into every community of the United States is another source of power for the Treasury Department. It is a most interesting commentary, as I have already pointed out in a previous chapter, upon the wisdom of the founders of the Government that the administration of the national resources has been since its institution honest and efficient.

According to the theories of some prominent "statesmen" of to-day, a government does not really need an army and navy to preserve it, and although a police department is convenient, it is not a necessity of government. There has never, however, been any question that, in addition to a treasury and a department for dealing with its neighbors, a government must have as an essential to its existence a proper "Home Affairs Department." This the United States has in the Department of the Interior, which we will now consider. President Lowell, of Harvard University, writing of the executive departments in the Government of England, says: "The Home Office is a kind of residuary legatee. It is entrusted with all the work of the secretariat that has not been especially assigned to the remaining Secretaries of State, or to the other administrative depart-

ments. Its duties are, therefore, of a somewhat miscellaneous character.”¹ These observations apply with equal force to our Department of the Interior.

In France ministerial portfolios are created by executive decree and from time to time their number has varied. In 1875 there were nine, in 1879 there were ten, in 1887 there were eleven, and to-day there are twelve. In the order in which these rank, they are as follows: (1) Interior; (2) Finance; (3) War; (4) Justice and Public Worship; (5) Marine; (6) Colonies; (7) Public Instruction; (8) Foreign Affairs; (9) Commerce; (10) Agriculture; (11) Public Works and Posts, Telegraphs and Telephones; and (12) Labor. There are seven executive departments in the Government of Switzerland: (1) Foreign Affairs; (2) Interior; (3) Justice and Police; (4) Military Affairs; (5) Imposts and Finance; (6) Posts and Railways; (7) Commerce, Industry and Agriculture.² There are to-day in the United States ten executive departments: (1) State; (2) Treasury; (3) War; (4) Justice; (5) Post-Office; (6) Navy; (7) Interior; (8) Agriculture; (9) Commerce; and (10) Labor. It is impossible to make an accurate comparison of the division of the executive departments in these three Republics, since each has peculiar and individual necessities which require different methods of treatment. The executive departments, however, correspond in a general way. Our Department of State, which is really a Department of Foreign Affairs, is the equivalent of

¹ A. Lawrence Lowell, *The Government of England*, vol. I, p. 105.

² Frederic Austin Ogg, *The Governments of Europe*, pp. 312, 424.

departments in France and Switzerland. Our Department of the Treasury, in France goes under the name of "Finance," and in Switzerland, "Imposts and Finance." Our Department of War, in France bears the same name, while in Switzerland it is called, "Military Affairs." Our Department of Justice parallels "Justice and Public Worship" in France and "Justice and Police" in Switzerland. In France, the Department of Public Works and Posts, Telegraph and Telephone deals with a greater variety of matters than our Post-Office, as also does the Swiss Department of Posts and Railroads. Switzerland, having no means of navigation, has no such department as our Navy Department and the French Ministry of Marine. Each of the three Republics has an Interior Department, but these departments deal with rather different matters. Exclusive of these Interior Departments or Ministries, we have noted six departments or ministries in France and five in Switzerland. In addition to the Interior Department, the United States has the three additional Departments of Agriculture, of Commerce, and of Labor. In addition to the Interior Department, France has the five additional Departments of Agriculture, of Commerce, of Labor, of Colonies, and of Public Instruction. Of these five departments, the first three parallel our departments of similar names. We have colonies, but no separate Department of Colonies, such matters coming under the jurisdiction of the Secretary of War. We have a Bureau of Education in the Interior Department, but no Ministry or Department of Public Wor-

ship. Besides the Interior Department and the other five enumerated departments, Switzerland has one more, the Department of Commercial Industry and Agriculture. It will be seen that the executive departments of the three Republics deal with practically the same matters, and the matters dealt with by the Executive and the names applied to the departments, in most governments, are practically the same. In 1849, the United States had but six departments, State or Foreign Affairs, Treasury, War, Navy, Justice, and Post-Office. Each of these departments dealt primarily with the matters indicated by its name, but each department had charge of other executive matters of the Government. In 1849 the Interior Department was created to take care of the miscellaneous matters which did not properly belong to Foreign Affairs, Finance, Military Affairs, Justice, or Posts. Since the creation of the Department of the Interior, there have been created the Departments of Agriculture, of Commerce, and of Labor; but when we take up these departments, it will be seen that these three, together with the Department of the Interior, all deal with home affairs other than those dealt with specifically by the departments in existence in 1849, and that the last four departments created in the Federal Executive deal with home affairs which are parceled out among these departments in no very scientific or orderly manner. The Departments of Agriculture, of Commerce, and of Labor, in the main exercise functions which were given to the Department of the Interior when it was created, and it will

be interesting to consider, a little more fully than we have previously done, the creation of the Department of the Interior.

Soon after the close of the Mexican War, and as an outcome of the accession of territory resulting from that war, as well as of the great increase in population, wealth, and business throughout the country, a movement was started having in view the establishment of a new executive department, to be known as the "Home Department," which should take over the various bureaus and offices transacting public business relating to domestic affairs, such as patents, pensions, Indian affairs, and the Census. At that time the work pertaining to these offices was distributed among various departments: The Patent Office was under the supervision of the Secretary of State; the Land Office and the Census were under the Secretary of the Treasury; Indian affairs were controlled by the Secretary of War; and pensions were granted under the supervision of the Secretaries of War and the Navy.

In his annual report for the fiscal year ended June 30, 1848, R. J. Walker, the Secretary of the Treasury, invited attention to the enormous amount of work devolved upon the head of that department, and the diverse nature of the duties performed by him, some of which had no connection with commerce or the public finances. He also pointed out that the State Department had no proper connection with the work of the Patent Office, and that Indian affairs and applications for pensions could be better handled elsewhere than in

the War and Navy Departments. He accordingly recommended that a new department be established, and that all the offices above named be placed under such new department.

The matter was subsequently taken up by Congress; and on February 12, 1849, the Committee on Agriculture of the House submitted a report endorsing the views of the Secretary of the Treasury, together with a bill for the creation of a new department, to be known as the "Home Department," or "Department of the Interior."

The committee stated that the immediate considerations which urged the establishment of the new department were the mischiefs, losses, and dangers resulting from the existing irrational and ruinous distribution of executive powers and duties. They added, however, that there were broader considerations of public policy dictating the creation of such a department. Since the establishment of the Federal Government sixty years before, they said, some \$700,000,000 had been expended for purposes of military aggression or defense; and the average expenditure for the War and Navy Departments was then twelve or fourteen millions of dollars. The whole amount of expenditure during the same period for the promotion of the arts of peace, the development of agriculture and of the mechanical sciences, and for the facilitation of internal intercourse and trade, the support of education and the diffusion of knowledge, did not exceed one million dollars. The report continued: "The general fact remains unaf-

fect, that war and preparations for war have been practically regarded as the chief duty and end of this Government, while the arts of peace and production, whereby nations are subsisted, civilization advanced, and happiness secured, have been esteemed unworthy the attention, or foreign to the objects, of this Government. It seems to us that this should not always continue, but that we should, as a wise people, reorganize the Government, so far as to fulfill these duties also, which are suggested by the nature, aspiration, and wants of our race, as psychic, moral, and intellectual beings; that it should do something towards protecting the people against those internal enemies, ignorance, destitution, and vice, as well as against those foreign foes who may invade, or who it is apprehended may assail us." In pursuance of the foregoing recommendation, Congress passed the act approved March 3, 1849,¹ entitled "An Act to establish the Home Department," which I have discussed in Chapter III.

To-day the Department of the Interior deals with five totally different classes of matters. The General Land Office, Reclamation Service, Geological Survey, and Bureau of Mines all relate to the public lands of the United States and would seem to be very properly in a department called the "Interior." The other things dealt with by the department are education, Indian affairs, patents, and pensions. When we examine the Department of Agriculture, we shall find that, in addition to the bureaus that deal with purely agricul-

¹ 9 U.S. Stat. L. 395.

tural matters, there is an office of Public Roads, whose duty it is to study road-building in connection with state highway officials and to conduct a one-year post-graduate course in highway engineering. This office has no more to do with agriculture than it has with labor, and it would seem properly to belong in the Bureau of Education, which, until a Department of Education is created, is in the Interior Department. There is also in the Department of Agriculture the Forest Service, and it would seem that this service has more to do with the lands held by the United States than it has to do with agriculture and so should belong in the Interior Department. The Forest Service has also an educational side which would seem to furnish an additional reason for its being placed in the Interior Department, which conducts the Bureau of Education. When we examine the Department of Commerce we shall see that, in addition to its functions as to matters relating primarily to commerce, under it the Bureau of the Census is a subdivision. Theoretically it would seem that the Bureau of the Census deals primarily with the personnel of American citizens and that the Census might just as well be in the Department of the Interior or in the Department of Labor. The Department of the Interior was created to attend to the miscellaneous home affairs of the United States. There was no particular theory of the separation of executive functions considered when it was created, nor have such principles been considered in the creation of the subsequent Departments of Agriculture, of Commerce, and of Labor.

The Department of the Interior grew too large and part of it was broken off to form the Department of Agriculture. It continued to grow and the Department of Commerce and Labor was created. Labor insisted on recognition in a department of its own and the Department of Labor was created. When the next executive department of the Government is created, the Departments of the Interior, of Agriculture, of Commerce, and of Labor should all be reorganized and the former Departments of State, Treasury, and War should be stripped of the matters which do not properly belong to them. The Department of Justice as at present organized deals solely with matters properly in the law department of the Government.

A statement of the functions of the Department of the Interior must be either a brief description of its duties as to public lands, education, Indian affairs, patents, and pensions, or it must be a very detailed description of these entirely diverse matters. Any full consideration of the history of the dealings of the nation with the Indians, or any full description of the public lands held at present by the United States, or any technical discussion of patents is entirely without the scope of this book. The Department of the Interior to-day conducts its work through the General Land Office, the Indian Office, the Bureau of Pensions, the Patent Office, the Bureau of Education, the Geological Survey, the Reclamation Service, and the Bureau of Mines. Before briefly considering the matters performed by these subdivisions of the department, it will be of inter-

est to note that the Department of Labor had its origin in the Bureau of Labor created in the Department of the Interior in 1884, and that there was once under the direction of the Secretary of the Interior a Commissioner of Railroads. The Interstate Commerce Commission was formerly also under his supervision, and the Secretary of the Interior once also had charge of the suppression of the slave trade. The department was created to handle all existing miscellaneous home affairs.

The policy of the new department was in harmony with the purpose of Congress in creating it, and in the very first annual report of the Secretary of the Interior, Thomas Ewing, of Ohio, submitted to the President, December 3, 1849, a recommendation for the organization of a separate Bureau of Agriculture, which should carry out, on an enlarged and systematic scale, the work hitherto performed by an agricultural division in the Patent Office. The Secretary also urged in this report the construction of a highway or a railroad to the Pacific Ocean. A Bureau of Agriculture was established, but it grew later into the Department of Agriculture. The work of the Department of the Interior in regard to railroads, however, deserves more than passing mention.

By the original act incorporating the Union Pacific Railroad Company, approved July 1, 1862,¹ the Secretary of the Interior was authorized to nominate five of the incorporators; and the company was required to

¹ 12 U.S. Stat. L. 489.

file its acceptance of the conditions of the act in the Interior Department. Various other duties with respect to the Pacific Railroads were imposed upon the Secretary from time to time; and he was, generally speaking, made the medium of carrying out the policy of the President with regard to such roads, with the exception, of course, of duties pertaining to the indebtedness of the roads to the United States, which were performed by the Secretary of the Treasury.

The Federal Executive, through the Interior Department, exercised very important functions in reference to the building of the great transcontinental railroads. At the present time, however, the Department of the Interior has nothing to do with these roads. I shall later consider the possibility of future executive supervision of the railways of the nation. To encourage the building of these roads, the United States granted to the railroads enormous tracts of its public lands, and to-day the Department of the Interior, through the General Land Office, has charge of all that remains of the enormous territory that originally belonged to the Federal Government.

As I have already stated, the present functions of the Department of the Interior have to do with lands, education, Indians, pensions, and patents. Let us first consider the functions of the department in reference to the government lands. The four subdivisions of the department, the General Land Office, the Reclamation Service, the Geological Survey, and the Bureau of Mines, all deal with these functions, and we shall con-

sider them together, although they are not grouped together in the official list of the subdivisions of the department. The General Land Office was organized as a Bureau of the Treasury Department under Act of May 25, 1812,¹ and became a Bureau of the Interior Department when the latter was created. The Geological Survey was organized as a Bureau of the Interior Department under Act of March 3, 1879,² while the Reclamation Service was not provided for until June 17, 1902.³ The Bureau of Mines was provided for May 16, 1910.⁴ The General Land Office is in charge of a commissioner, while the Geological Survey and the Reclamation Commission and the Bureau of Mines are in charge of directors. Each of these four divisions of the Interior Department has its separate organization and is only under the general direction of the Secretary of the Interior. The General Land Office not only has its own chief clerk, but has its own corps of law clerks and examiners, and is itself divided into twelve divisions, each of which is in charge of a chief of division. So, too, the Geological Survey has its own chief clerk and its various administrative branches. The Reclamation Service has its own chief clerk, chief engineer, and chief counsel as well as a corps of assistants, while the Bureau of Mines is divided into eleven sections, each in charge of a chief of section. One of these sections is the legal department. The General Land Office has entire charge of the survey, management,

¹ 2 U.S. Stat. L. 716.

² 20 U.S. Stat. L. 394.

³ 32 U.S. Stat. L. 388.

⁴ 36 U.S. Stat. L. 369.

and disposition of public lands, with all the various matters relating to them, such as the adjudication of conflicting claims, the issuance of patents for lands, granting of railroad rights of way, and other easements; the Geological Survey is charged with classification of the public lands and the examination of the geological structures, mineral resources, and mineral products of the national domain. It has been and still is engaged in making a geological map of the United States involving both topographic and geologic surveys, and every year it collects its statistics of mineral productions and makes investigations as to surface and underground waters. The Reclamation Service is charged with the survey, construction, and operation of the irrigation works in arid States, while the Bureau of Mines investigates methods of mining, the treatment of ores, the use of explosives, and other matters relating to mining. The bureau also tests and analyzes coals, ores, and other mineral fuel substances for the use of the United States. One of the most important duties of the bureau is in relation to the safety of miners, appliances for the prevention of accidents, and improvements of conditions under which mining operations are carried on. In this last function, the Department of the Interior through the Bureau of Mines touches very closely the sort of work one would expect to be done by the Department of Labor.

Since the Government was founded, about 1,835,000,000 acres of land have come into the control of the United States, and all of this has been disposed of in

various ways except about 700,000,000 acres.¹ By the Louisiana Purchase in 1803, the territory from the Mississippi River to the Rocky Mountains became part of the United States, and all but a very small portion of this territory became the absolute property of the Government. The Oregon Territory and the purchase of Florida also brought to the United States added land assets. The public domain was further augmented as a result of the Mexican War, and the purchase of Alaska in 1867 brought another enormous and valuable territory into the possession of the Government. The greater part of the public domain of which the Government has disposed has been sold to individual settlers at low rates for the purpose of developing the country. Large grants have been made to various of the States for educational purposes and for internal improvements. Ten million acres were given to the States for agricultural college properties in 1862, and since 1860 such great trans-continental railroads as the Northern Pacific, Union Pacific, and Central Pacific were granted large tracts of land as an aid to the building of these railroads. The Government is still disposing of land under the law which provides for homestead entries by actual settlers. The report of the Secretary of the Interior shows that the total cash receipts from sales of public land for the fiscal year 1914 were \$4,256,102.96. Oil lands, coal lands, forest lands, water rights, timber lands, all give rise to most important questions concerning the proper administration of the public domain, and the Secretary

¹ Frederic J. Haskin, *The American Government*, p. 79.

of the Interior in his report for the fiscal year ending June 30, 1914, says, "Contrary to the general belief, the business of the Land Department is increasing, although the monies received from public land sources are decreasing." By the Act of March 1, 1872, Congress inaugurated the policy of setting aside tracts of land as national parks. The Yellowstone National Park was the first of these national reserves. Since the creation of the Yellowstone Park, eleven different parks in various parts of the country have been created. Alaska, rich in mineral and other resources, presents at the present time most important questions for solution by the Department of the Interior. There has been no railroad construction in Alaska for a number of years, and on March 12, 1914, Congress passed a law providing for the construction of a system of railroads into the interior of Alaska. The handling of the public lands of the Government is a matter to which the general public has given but little consideration, and it is only in recent years that a realization of the enormous assets still possessed by the Government has been brought home to the American people.

The Patent Office, Bureau of Education, Office of Indian Affairs, and Bureau of Pensions remain to be considered. Article I, section 8, of the Constitution gave to Congress the power to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries. In the beginning of the Government, patents were granted by a board, of

which the Secretary of War and the Attorney-General were members, and later the granting of patents devolved upon the Secretary of State and the Attorney-General. In 1836 a Bureau of the State Department was established having entire charge of patents, and on the creation of the Department of the Interior, in 1849, the Patent Office was transferred to it. Patents are granted to the original inventor and secure to him the exclusive right to his invention for a term of years. The Patent Office is in charge of the Commissioner of Patents and two assistant commissioners. It employs an enormous force of examiners and clerks and occupies the whole of a huge building for its purposes. The work of the office is highly technical, and the "Congressional Directory" for December, 1914, gives a list of forty-four principal examiners having charge of applications for patents relating to acoustics, artesian wells, buckles, buttons, buildings, hardware, carriages, chemistry, electricity, and a long list including all matters in which any one could possibly claim an invention. It is stated that the civilized nations of the earth have issued three million patents, and that more than one million of these have been issued by the American Patent Office. The present Patent Office Building, although it occupies several square city blocks in Washington, is totally inadequate for its purposes, and the work of this office is in a marked degree indicative of the mechanical and industrial achievements of the American people. During the fiscal year ending June 30, 1914, the total number of applications for patents was 81,539, the greatest

number received during any year in the history of the Patent Office. The total receipts of the office for that year were \$2,069,988.95.¹

One sometimes finds a great deal of unintentional humor in the official reports and directories of the Government. The official duties of the Commissioner of Education, as set forth in the "Congressional Directory" of December, 1914, are as follows: "The Commissioner of Education collects statistics and general information showing the condition and progress of education, issues an annual report in two volumes, a bulletin in several numbers annually, and miscellaneous publications; has charge of the schools for the education of native children in Alaska, supervises the reindeer industry in Alaska, and administers the endowment fund for the support of colleges for the benefit of agriculture and mechanic arts."² Professor Fairlie says, "The bureau has collected one of the most valuable pedagogical libraries in the world and has been called a sort of educational clearing-house."³ The issuing of an annual report in two volumes, a bulletin in several numbers, and the supervision of the reindeer industry in Alaska by no means give an adequate understanding of the important work rendered by the Commissioner of Education. Although the National Government under the Constitution is not authorized to

¹ *Report of the Secretary of the Interior for 1914*, p. 52.

² *Congressional Directory*, December 14, 1914.

³ John A. Fairlie, *The National Administration of the United States*, p. 214.

establish a general system of education, it takes a most important part in educational matters throughout the country, and there are numerous educational activities of the Government which should be brought under the direction of the Commissioner. During the year 1914 the bureau through its specialists studied such important matters as recent developments in English universities, preparation of teachers in secondary schools in Germany, France, and Great Britain, and exercised a most salutary influence throughout the country. Representatives of the bureau inspected thirty-five American colleges and universities, attended fifteen conferences on higher education in different parts of the country, worked out plans for the tabulation of college curricula, and otherwise promoted education. All of this in addition to conducting the Alaska reindeer service!

As a part of his report on the Bureau of Education, the Secretary of the Interior states: "On June 30, 1913, there were in Alaska 47,266 reindeer distributed among sixty-two herds. The increase for the year was twenty-three per cent, notwithstanding the fact that nearly five thousand reindeer were killed for their meat and skin. The total income of the natives from the reindeer industry during the year, exclusive of meat and hides used for the natives themselves, was \$66,966.00." ¹

Upon reading this, I wrote to the Secretary of the Interior as follows: "I am working on a little book on the executive departments, and I am venturing to ask

¹ *Report of the Secretary of the Interior for 1914*, p. 56.

you if you could advise me how it happens that the Bureau of Education has charge of the Alaska reindeer service. Such duties seem to me quite foreign to the bureau, and as illustrative of the heterogeneous functions of the Department of the Interior. There may, however, be some reason for the association of the reindeer service with the Department of Education. If there is, I should be greatly obliged for information on this subject."

I very promptly received the following explanation from the Chief of the Alaska Division: —

"The Alaska reindeer service is an integral part of the educational system of the Bureau of Education for northern and western Alaska. The district superintendents of schools are also the superintendents of the reindeer service; the teachers in charge of the United States public schools in the regions affected by the reindeer industry are *ex-officio* local superintendents of the reindeer herds in the vicinity of their schools. The reindeer service is a system of industrial education of the most practical kind, which, in the course of a single generation, has elevated the Eskimos in the coastal regions of western Alaska, from Point Barrow to the Pacific Ocean, from nomadic hunters and fishermen, eking out a precarious existence upon fish and game, to civilized, thrifty people having in their herds assured support for themselves and opportunity to acquire wealth by the sale of meat and skins to the white men in those regions."

The Constitution (article I, section 8) provides that

Congress shall have power to regulate commerce with foreign nations and among the several States, and with the Indian tribes. The Constitution makes no further reference to the Indians. Washington delivered his first inaugural address in the City of New York on April 30, 1789. Among the first, if not actually the first of the special messages he sent to the Senate referred to Indian treaties. On May 25, 1789, he communicated with the Senate as follows: "Gentlemen of the Senate, In pursuance of the order of the late Congress, treaties between the United States and civilized nations of Indians having been negotiated and signed, these treaties, with sundry papers respecting them, I now lay before you for your consideration and advice, by the hands of General Knox, under whose official superintendence the business was transacted and who will be ready to communicate to you any information on such points as may appear to require it."¹ General Knox had served throughout the Revolutionary War, was an officer of the Society of the Cincinnati, and at that time was the Secretary of War, and, although the only reference in the Constitution to Indians referred to the regulation of commerce with the Indian tribes, for nearly fifty years after Washington's inauguration, Indian affairs were of necessity administered by the military authorities. In 1832 the office of Commissioner of Indian affairs was created in the War Department to deal with the Government's peaceful relations with the Indians; but until the creation of the Department of the

¹ *Messages and Papers of the Presidents*, vol. I, p. 57.

Interior and the transfer to it of the Bureau of Indian Affairs, the relations of the Government to the Indians were far from peaceful. There have been a number of interesting books written on the subject of the American Indian and something has been written concerning the relation of the Government to the Indian; but at the present time the Indian problem, although differing entirely from what it was at the institution of the Government, is one of the most interesting and important questions before the Federal Government, and the subject of the relation of the Government to the Indians, together with the history of the Indians in this country, furnishes a most inviting field for research and a most profitable region of investigation for the student of history and government. There is an opportunity for a most valuable work on this subject. On the 1st of July, 1914, the Cherokee Nation ceased to exist. Its Senate and House, governor and officers, laws and property have disappeared. The members of the Nation became American citizens, and if the Government at the present time has any well-defined policy as to the Indians, it is to break up the tribal government and fit them for individual citizenship as soon as possible. I cannot here go into the history of the Indian or his relation to the Government. The relations of the Government with the Indians are among the most important matters with which the Interior Department has to deal, and the Interior Department at the present time is the most interesting department of the Executive by reason of the importance and novelty of the problems which

confront it. The Census of 1860 showed 254,300 Indians in the United States. The Census of 1910 shows an Indian population of 304,950. These Indians mostly live on government reservations which Secretary of the Interior Lane aptly designates as "little more than expanded and perhaps somewhat idealized orphan asylums." The importance of the present Indian problem may be seen from the fact that at present they have lands aggregating 109,150 square miles, or territory equal to that of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Kentucky, and Virginia. The Department of the Interior estimates these holdings to be worth \$600,000,000. Over two thirds of this land is now held as individual farms, the unallotted or tribal lands being estimated as worth less than \$200,000,000. The "Report of the Secretary of the Interior for 1914" says: "If the oil and coal and timber lands belonging to the Indians were appraised at their full value, and if to this the value of their yieldings and personal property were added, it is estimated that the Indians would be found to have a wealth approximating \$900,000,000." In other words, each Indian in the United States is at the present time worth on an average \$3000. In addition to these possessions, the Treasury of the United States has tribal funds approximating \$50,000,000, while in the banks throughout the nation, the Government has deposited to the credit of individual Indians under its control something over \$18,000,000. The Secretary of the Interior considers the Osage Indians as the wealthiest people in the world,

and the department estimates the average wealth of the Osage Indians at \$9579.85. With their land-holdings and oil and gas royalties, for an average family of four the Osages have an annual income of approximately \$2700, in addition to their income from lands, and some families have an income of \$12,000 a year.¹

A Bureau of Pensions was originally under the direction of the War Department,² and logically it might just as well still be under the direction of the War Department as a part of the Department of the Interior. In his first annual address to Congress, on January 8, 1790, Washington said: "A free people ought not only to be armed but disciplined; to which end a uniform and well-digested plan is requisite; and their safety and interest require that they should promote such manufactories as tend to render them independent of others for essential, particularly military supplies." ³ I have already quoted President Taft as stating, as his opinion, that the present pensions are largely due to our not having an adequate army ready in the past. The Secretary of the Interior reported to the President that during the fiscal year ending June 30, 1914, the total expenditures for pensions had been reduced from \$174,-171,660.80 in the preceding year to \$172,417,546.26.⁴ At the end of this fiscal year there were on the pension roll 785,239 names, a net loss of 35,033 from the total of 820,272 on the roll at the beginning of the year; the

¹ *Report of the Secretary of the Interior for 1914*, p. 3.

² Act of March 2, 1833, 4 U.S. Stat. L. 622.

³ *Messages and Papers of the Presidents*, vol. I, p. 65.

⁴ *Report of the Secretary of the Interior for 1914*, p. 19.

decrease of pensioners for the preceding year was 40,094. The actual number of soldiers pensioned for the Revolutionary War was 52,504. The last pensioned soldier of this war died in 1869 and the last pensioned widow died in 1906. For the War of 1812, the total number of pension certificates issued was about 67,000 and the last surviving pensioned soldier of this war died in 1905.¹ Since the institution of the Government, it is estimated that about \$4,680,000,000 has been paid for pensions, and that of this amount all except about \$163,000,000 has been paid on account of Civil War pensions.

The Bureau of Pensions occupies a huge building devoted exclusively to its purposes in Judiciary Square in Washington. On the outside of this building is a decorative frieze under the eaves running all about the building, and upon this frieze, in plaster, a long line of troops is ever silently tramping. The Civil War was fought for the preservation of the Union. Whatever may be one's views as to the amount and kind of pensions paid, whether one regards this fabulous annual expenditure as partly a reward for service and partly as a penalty for unpreparedness, or whatever view the American citizen may take of these pensions, this greatest item of annual expense to the Government should cause every citizen of this great nation to ask himself the question, whether in the words of Washington a free people ought not to be "armed and disciplined." The history of the Department of the Interior and of the matters now under its supervision

¹ *Report of the Secretary of the Interior for 1914*, pp. 48-51.

gives one the best idea of the miraculous development of this nation, of its enormous present resources, and even in the mind of the most unimaginative should awake visions as to the future of this Union. The Civil War was fought for the preservation of the Union. The constitutional questions arising from that war are settled once and for all. The Department of the Interior deals with the greatest material resources of the nation. Through the Bureau of Pensions it makes the greatest single item of national expenditure, and it performs some of the most important functions of the Federal Executive in securing to the people of these United States the "more perfect Union" sought by the Constitution.

NOTE. — Because of the European War, certain temporary changes have been made. Third Assistant Secretary of State Phillips advises me that a separate Mexican Division was created July 28, 1915, not in the nature of a permanent division, but to meet the exigencies of the present situation. A Bureau of War Risk Insurance in the Treasury Department has also been created. Its purpose, states Assistant Secretary Peters, is to offer to American vessels and cargoes the facilities for war risk insurance provided by English and continental governments after the outbreak of the war.

CHAPTER VIII

FUNCTIONS OF THE EXECUTIVE DEPARTMENTS IN "INSURING DOMESTIC TRANQUILLITY"

THE DEPARTMENTS OF WAR, THE NAVY, AND JUSTICE

THE Constitution of the United States (article II, clause 2) says that the President shall be the Commander-in-chief of the army and navy. The Secretary of War, the third ranking member of the Cabinet, is the executive officer through whom the President exercises these functions on land in peace and in war, but the War Department has important administrative duties concerning the Government of the United States other than the national defense. Expenditures of the department show its various functions.

For the fiscal year 1913 the estimated disbursements for the War Department were \$158,000,000. (This did not include \$165,000,000 for pensions for the Civil and other wars.) For the year July 1, 1911, to June 30, 1912, of the total disbursement of \$147,000,000, the appropriations amounted to about \$2,000,000 for the maintenance of the civil establishment of the War Department, including such matters as the salaries in the office of the Secretary of War and other officials in Washington and the current expenses of the department. There was appropriated about \$91,500,000 for the support of the army proper, a little over \$1,000,000 for the Military Academy at West Point, and nearly

\$4,000,000 for the support of the organized militia. Of the above \$147,000,000 for the War Department in 1912, \$40,000,000 was appropriated for various public works of the United States. Of this amount over \$6,000,000 was for fortifications, arsenals, and military posts, while the balance was chiefly appropriated for work upon the rivers and harbors of the United States under the direction of the War Department. There were also over \$8,000,000 of insular appropriations, and so, out of the total \$147,000,000 appropriated for the year ending 1912, it will be seen that a considerable part was expended for non-military purposes.¹ But the purely military expenditures of the United States Government amounted to a very large sum, and matters relating to the military forces of the Government are the chief concern of the War Department, although the duties of the Secretary of War include most important domestic matters and the entire supervision of the insular possessions of the United States. We will consider the general functions of the department and its general organization, before discussing its purely war duties.

The work of the department can be divided into four classes: The army, including the National Guard; the Engineering Department, supervising river and harbor improvements throughout the United States; the Panama Canal; the general supervision of the Philippine Islands, Porto Rico, and other insular possessions. The Secretary of War, as head of the department, is charged

¹ *Annual Report of the Secretary of War for 1912.*

with the supervision of all things relating to the above matters, and in his duties he is aided by one Assistant Secretary of War, who is authorized to decide all cases except those involving "questions of policy, the establishment or reversal of precedents, or matters of special or extraordinary importance."

The Assistant Secretary has particular charge of all matters relating to the militia. The construction of the Panama Canal, under the direction of the War Department, was successfully carried to a termination under the direction of officers of the army. The importance of the Panama Canal is impossible of estimation. Its opening will create a new epoch in the history of the world, but its construction contains for us nothing of interest in connection with the executive departments of the Government, except that the efficiency of the present Panama Canal Commission is a most favorable comment upon the character and ability of American army officers and the work of the War Department, and that to-day the Chief of Staff says we have no adequate army to defend it. The Philippine Islands are at present governed by the Commission to the Philippine Islands, with a President and Governor-General and the local legislature. The affairs of the Philippine Islands and of Porto Rico are under the general supervision of the Bureau of Insular Affairs of the War Department. The Board of Engineers for Rivers and Harbors in the War Department has charge of numerous internal improvements in the United States. The actual amount expended under the direction of the Chief of Engineers

in connection with the improvements of rivers and harbors during the year ending June 30, 1912, was \$35,719,403.62, and its work included such matters as the construction of the Troy Dam, in the State of New York, in the Hudson River, for the improvement of the waterways in connection with the reconstruction of the Erie Canal. The river and harbor work of the department is of the very greatest importance to the United States and constitutes one of its largest annual expenditures.

The foregoing are the non-military duties of the War Department. Our military affairs are directed through various bodies in the department. At the head of them is the General Staff Corps, which is the general directing power of the army. The General Staff Corps was organized under the provisions of the Act of Congress, approved February 14, 1903. It is the directing brains of the army. It is its duty to prepare plans for the national defense and for the mobilization of the military forces in time of war; and to study and report upon all questions affecting the efficiency of the army. At the head of the General Staff is the Chief of Staff, who is practically the commanding general of the army, although in time of peace we have no such officer. He has supervision of all troops and of all the other departments which exist for the administration of army affairs. The office of the Chief of Staff is the supervising military bureau of the War Department. The other bureaus and divisions of the department relating to military affairs are the Division of Militia Affairs and the various military bureaus.

The Division of Militia Affairs, which is especially under the direction of the Assistant Secretary of War, has charge of all matters relating to the National Guard of the various States, including such matters as armament, equipment, discipline, training, education, and organization. The United States has in recent years assumed the direction of the militia, and since the Spanish War has brought the various state organizations to a much higher state of efficiency. Every summer there are conducted camps of instruction in which the militia and regular army usually participate, and it has been the policy of the Government more and more to make the militia a first line of support for the army in time of war.¹

Of the various military bureaus, it is unnecessary to

¹ Experts agree that the state militia is not the most effective support for the army. Until something better is provided it is all we have. Universal, obligatory military service, somewhat after the Swiss system, seems to be the only adequate solution of our needs, and the chief argument in favor of the "Continental Army" plan is that it is a step toward universal service as an adequate protection for the Federal Government. Mr. Henry Breckinridge, Assistant Secretary of War, has furnished me with the following official explanation of the Continental Army: "The Continental Army, so-called, is the supplement or reserve of the Regular Army. It will consist of 400,000 men that are organized, equipped, officered, and subject to instant call. It will be raised by annual increments of 133,000 men, — each man to serve with the colors three years, — so that after the first three years, it will always have 400,000 men in it with the colors." In reference to the recruiting of the Continental Army, Secretary Garrison says, "Taking the four hundred congressional districts of the country, it would require three hundred and thirty-three each year from each one." At the present time, however, the Continental Army is only a plan and not a part of our national defenses.

do more than mention their names. There is the Office of the Adjutant-General, which has charge of the issuing of orders, and the Office of the Inspector-General, which has charge of the examination of the condition of troops and military posts. The Office of the Judge-Advocate-General deals with matters of discipline and is the law department of the army, as the Office of the Surgeon-General deals with the physical welfare of the troops. The remaining office of importance, that of the Quartermaster-General, is one that has charge of the payment, feeding, clothing, and transportation. The present Quartermaster Corps is a consolidation of the Office of the Quartermaster-General, the Commissary-General, and the Paymaster-General of the army, provided by Act of Congress, August 24, 1912.

Such are the general functions of the department, viewed as a branch of the Federal Executive. The power of the department, except as it directs our colonial affairs, and the matter of rivers and harbors, has increased little since its creation. The War Department has not developed in any such way as has the Department of Justice, and there is no arm of the Executive that to-day requires serious consideration more than the War Department. The United States spends more money on its army than any other nation in respect to what it has to show for it. President Taft, writing in 1913, said: "So far as our military policy is concerned, it would seem as if the maxim that 'the Lord looks after children and drunken men' ought to be extended to the United States, for by hook or crook, through mistakes

of the enemy, or through luck and by the expenditure of far greater treasure and many more lives than were necessary, we have generally been successful.”¹ He also writes: “I have not the comparative figures for the cost of the European armies and our own this year, but in 1906 this statement which I made as Secretary of War was true: ‘Our regular army to-day amounts in effective force to about 60,000 men, and it costs us in round numbers about \$72,000,000 to sustain our military establishment. France maintains an army on the active list of 546,000 men, and it costs her \$133,000,000. Germany maintains an army which has upon its active list 640,000 men, and it costs her \$144,000,000 a year to maintain it. In other words, France has an army about nine times the size of ours which it costs her substantially less than twice the sum to maintain, while Germany has an army more than ten times as large which it costs her just about double our sum to maintain.’”²

It is absurd for a nation possessing the vast wealth of the United States to allow itself to be so inadequately protected. December 5, 1779, Charles Carroll of Carrollton, wrote to Benjamin Franklin: “We have a good, though not a numerous army, about 20,000 fine hardy fellows, as tough as the knots of an old seasoned oak, well disciplined, well armed, and pretty well clothed, commanded by a man whom they reverence and love.”³ It is interesting to compare this description of our army

¹ *Popular Government*, p. 248.

² *Ibid.*, p. 255.

³ *Life and Correspondence of Charles Carroll of Carrollton*, vol. II, p. 30.

in 1779 with the above observations of President Taft, and especially with the report to the Secretary of War, of November 15, 1914, of the Chief of Staff, Major-General W. W. Wotherspoon. According to this report, on November 15, 1914, the actual strength of the army, exclusive of the Philippine Scouts, was 4572 officers and 88,444 enlisted men. The authorized strength was 4726 officers and 95,977 enlisted men. The army, said General Wotherspoon, was therefore 154 officers and 7533 enlisted men below its authorized strength. The Secretary of War, in December, 1912, stated that "outside of the regular army, the only force of men who have received any military training existing in the United States to-day is the National Guard." General Wotherspoon reported that on November 15, 1914, the total reported strength of the National Guard, or organized militia, was 8323 officers and 119,087 enlisted men. Of the regular army the field or mobile force of our army was less than 52,000 enlisted men. Of the organized militia only 73.87 per cent of officers and men attended the annual camps of instruction. As to the organized militia, General Wotherspoon said: "It must, however, be admitted, that unless there be a material change in the laws governing the organized militia, which will bring about a greater reliance upon and an increased control by the General Government, that branch of our military establishment cannot be regarded and depended upon as a reliable force." The report concludes that, "in looking over the strength of our garrisons in foreign possessions, it becomes at once manifest that the garrisons

we are maintaining there or propose to maintain there, under the scheme of distribution of our army as it exists at present, are entirely inadequate for the need of those possessions." As to conditions at home, the then Chief of Staff said, "That we cannot, with our present strength, rapidly assemble a sufficient force, fully equipped for field operations, to meet such an expedition as might be dispatched against our shores, is evident." Worthy of serious consideration is the assertion: "That the great waterway of the Panama Canal cannot be protected against the operations of a first-class military power by the present or proposed garrison we contemplate placing there, without the power and ability to reinforce it rapidly by troops from the United States, is equally manifest."

I have elsewhere compared our defenses with that of a first-class continental power,¹ and it is not the province of this little book to discuss army reform; but the department of the Executive, primarily meant to insure domestic tranquillity, has not kept pace with the needs of the Government. For the amount of money expended and for the proper protection of the United States our present military establishment is extremely inadequate. In his last report as Secretary of War, Mr. Stimson called attention to "the diffusion of the army and the lack of tactical organization, which results in our having what is virtually a number of scattered groups of constabulary rather than an integral organization and

¹ "Autumn Manœuvres of a German Army Corps," *Infantry Journal*, December, 1912.

which prevents the proper training and team work of the national army."

The General Staff of the army, on August 12, 1912, made a report on "The Organization of the Land Forces of the United States." This document contained the broad outlines of a comprehensive military policy. Some of the reforms proposed can be carried out by executive action, but the greater part of these reforms must be provided by Congress. Treatment of the army itself in time of peace has varied under every Administration, and almost uniformly Congress has opposed the recommendations of the Executive for reforms of the army. The existence of isolated and small frontier posts and garrisons throughout the United States has repeatedly been the subject of criticism by the Executive, but so far Congressmen have been very loath to consent to the removal of any body of troops from cities in their districts, which profit by the presence of such troops.

I think it is time that the people of the United States read and ponder General Wotherspoon's report and bear in mind the opinion of the most pacific of Presidents: "I am as strongly in favor as any one can be of prosecuting every plan that will make war less and less probable. I believe there are practical plans that can accomplish much in this direction. I do not believe the plan of common disarmament is a practical plan. It has been tried and has failed."¹ I am entirely of the opinion here expressed by President Taft and I also

¹ *Popular Government*, p. 256.

agree with his following conclusion: "The people of the United States, on the whole, are a shrewd, enterprising, and provident people, but they have not proven it by their military policy." ¹

A morning newspaper of to-day (February 19, 1915) lies on my table as I begin this chapter. Under large headlines I read this report: "London, Feb. 18. — The immediate effect of the German submarine blockade of the British Isles, beginning to-day, was to tie up all passenger traffic from England to Holland. The crews of one Danish and three Norwegian ships at Aarhus, Denmark, refused to-day to sail for England and left their ships. This action was announced by the Exchange Telegraph Company's Copenhagen correspondent in a dispatch which reported that the Norwegian steamer Nordcap had struck a German mine in the Baltic Sea and foundered. All her crew perished." ² President Lowell, of Harvard University, writing in November, 1908, says of the British Admiralty: "The system appears to be highly satisfactory, and in fact it is constantly held up as a model to the less fortunate

¹ *Popular Government*, p. 247.

I wrote this chapter in February, 1915. When I corrected the proof on February 4, 1916, I found no need for a revision. "Preparedness" was much discussed, and various plans were under consideration, but in regard to actual armaments the Federal Government was in exactly the same position as it was a year before. I have elsewhere discussed the subject of "Preparedness." ("Policy and Armament," *Baltimore American*, January 25 and 28, February 1 and 5, 1916. These articles were written under the name of "X.")

² *The Sun*, Baltimore, Friday morning, February 19, 1915, vol. CLVI, no. 82, p. 1.

chiefs of the army.”¹ As I write, the whole fabric of the English Government is being tested. Built up through centuries of development by the employment of legal fictions, the English Government to-day has seemed to be one of the most effective Governments in existence, but from the point of view of American political science, there is little benefit to be derived from a comparison of our Federal Executive and the executive departments of the English Government. The principal divisions of the English executive departments are the Foreign Office, Colonial Office, India Office, War Office, Home Office, the Treasury, the Post-Office, the “Law Officers’ Department,” the Admiralty, the Board of Trade, the Local Government Board, the Board of Works, the Board of Agriculture, and the Board of Education. It is impossible here to go into the peculiarities of the English Government, which are due to the necessity of placing new wine in old bottles by attributing novel functions to ancient institutions. A familiar example of such fictions is that by which the Island of Ascension, instead of being under the direction of the Home Secretary as an island, is brought under the jurisdiction of the Admiralty upon the official announcement that the island is to be considered a vessel of war. The boards I have enumerated, in the words of Mr. Lowell, “are legal phantoms that provide imaginary colleagues for a single responsible Minister.”² The English Government is,

¹ A. Lawrence Lowell, *The Government of England*, vol. I, p. 93.

² *Ibid.*, vol. I, p. 84.

therefore, much more like our Government than would appear from a superficial examination of the names of the executive departments, and each of these departments is actually under the direction of a Minister who is more or less in the position of the head of one of our executive departments. The Admiralty, however, is one of the executive departments, and in fact the only one which is actually conducted by a board. This board consists of a First Lord, four Naval Lords, and a Civil Lord, together with the parliamentary and permanent Secretaries.¹ The First Lord is practically a Minister of Marine or Secretary of the Navy, assisted by an advisory council. The British Admiralty has many points in common with our Navy Department, in which our Secretary of the Navy corresponds to the English First Lord, while the chiefs of the various bureaus have duties quite similar to those of the remaining members of the Admiralty, with the marked difference that none of our executive officers have seats in the legislative branch of the Government. As I have before pointed out, it is impossible to draw any very close analogy between our executive departments and those of foreign Governments, but a comparison is interesting.

In 1798 the sea soldiers of the United States passed from the control of the War Department, and the newly created Secretary of the Navy assumed direction of the naval affairs of the nation. The War of 1812 was an overseas war, but had the army of the United States

¹ *Report of Commissioners on Administration of Naval and Military Departments, Com. Papers* (1890), XIX, 1, pp. viii-ix.

been as efficient as its navy, the war might well have been settled on land, for England possessed in Canada vulnerable territory. The Civil War was a land war, but the navy rendered conspicuous service. In the problems of the national defense, or, as the Constitution puts it, securing domestic tranquillity and providing for the common defense, there should be no politics. Whether our army and navy are adequate for these purposes is no more a question for a division of the citizens of the United States into the usual political parties than is the question of whether or not the New York police force furnishes adequate protection for life and property in that city.

The "New Navy" dates from Secretary Whitney, 1885-89, and in the Spanish War, as well as in the previous wars, rendered conspicuously efficient service. The army of the United States has no logical territorial systems of garrisons and depots. Frontier posts of by-gone days still exist at the positions in which they were originally placed as necessities to Indian warfare, and remain at these locations in spite of the fact that the need which called for their original establishment has long since ceased to exist. From the points of view of discipline, mobility, and administration, the scattering of what land forces the United States possesses is very detrimental to the army. The location of navy-yards and depots has been frequently subjected to question, but the navy is not under the same disadvantage as the army in reference to the unsystematic location of garrisons, for in the navy each fighting unit possesses in it-

self the essentials of mobility and action. Unlike a regiment or greater fighting unit of the army, which, in a country like ours, must rely upon transportation by railroad or water, each ship of the navy individually possesses facilities of transportation, subsistence, and combat. The navy has been fortunate in another matter of great importance. The majority of the members of most Congresses have considered themselves *ex-officio* experts in army affairs, and the list of colonels of volunteers commissioned in the Spanish War would lead one to believe that the opinion is prevalent that any one can successfully command a regiment. Fortunately for the navy, a similar belief has not prevailed. The navy has not suffered to the same extent as has the army from unskilled civilian interference. President Lowell is authority for the statement that a similar condition has existed in England. To the Englishmen, however, he says, "the navy is a mystery which ordinary men do not pretend to understand, and with which they do not attempt to interfere; and this is a security for expert management."¹ The navy is admittedly a matter for experts. For its history and its uses one must look to the writings of such men as the late Admiral Mahan. For the study of the Federal Executive, the navy offers little material. I shall, therefore, attempt only a brief consideration of the navy as a force available to the President in his capacity as commander-in-chief for insuring domestic tranquillity.

The constructive genius of the American people has

¹ A. Lawrence Lowell, *The Government of England*, vol. 1, p. 102.

been much more alert to the needs of the navy than to the possession of a properly trained, equipped, and organized defensive army. Until the termination of the present European conflict, all opinions as to the value of naval units must be held in abeyance, but it is stated that the American navy at the present time is in a commendable state of efficiency, whether or not it is adequate in size for the protection of the nation. It certainly possesses the best training school for officers that exists, and the character of the training accorded to the officers of the navy is vital to the efficiency of that branch of the service. Experts agree that our system of naval training for officers is better than that of England. English writers, especially after the Boer War, were united in their adverse criticism of English army training, but there has never been any serious criticism of the training afforded by West Point to what army officers the United States has graduated from that institution. The American people are as capable of organizing and training a sufficient force as are the people of any other nation, but they are not awake to the dangers that threaten our huge and inadequately protected borders.

The Naval Academy at Annapolis was formally opened October 10, 1845. Its history ¹ states that the Naval Academy at Annapolis owes its inception to the administrative ability of George Bancroft as Secretary of the Navy. "Less than eight months after as-

¹ James Russell Soley, *Historical Sketch of the United States Naval Academy*, pp. 74-76.

suming the duties of his office, Bancroft was enabled to present to the country a fully organized academy, in efficient working order, which was destined to do for the navy what West Point had so long done for the army. He had accomplished during a single recess of Congress what his predecessors had for thirty years in vain attempted to secure by legislation." Whatever matter fully commands the interest of the American people is apt to be well and satisfactorily accomplished. Unfortunately, very little public interest has been taken in the past in the study of governmental problems. When the proper use of experts in government is fully realized, and when a proper separation between political and purely expert officers in the Government is made, then and only then shall we begin to secure thoroughly efficient service in our cities, in our States, and in our federal service. I should be very glad to see the Department of Education in the Interior Department erected into a Department of Education whose head would rank with the other members of the President's Cabinet, and I should like to see, as one of the most important functions of this department, the establishment and maintenance of a training-school for public civil servants of the Government similar to West Point and Annapolis.

Prior to the foundation of the Naval Academy, officers mostly obtained their training from instruction given upon the individual ships of the navy. There is no comparison between the efficiency of the training thus afforded and the education that may be obtained

at the present Naval Academy. At the present time the civil employees of our diplomatic service, our consular service, and our various administrative branches of the Government are trained in a much less satisfactory way than were the officers of the navy prior to the foundation of the Naval Academy. We have learned from that experience the value of such a training-school. To-day our colleges are devoting an increasing amount of attention to instruction in government, and many courses are given with the avowed purpose of fitting students for government service. The furtherance of such education, however, would be greatly facilitated by the organization of a governmental school of administration and public service. Washington was in favor of a National University. The whole basis of the government of a free people is proper education. General collegiate or university education is not lacking in facilities in this country, but it is imperative that some method be devised by which trained men may be reared for the work of the federal executive administration.

In reference to this, Secretary Bancroft's annual report of December 1, 1845, contains the following account of the founding of the Naval Academy which merits consideration: "Congress, in its great desire to improve the navy, had permitted the department to employ professors and instructors at an annual cost of \$28,200; and it had been used, besides the few employed at the receiving-ships and the Naval Asylum, to send professors with the midshipmen to every ocean and every clime. But the ship is not friendly to study, and

the office of professor rapidly declined into a sinecure; often not so much was done as the elder officers would cheerfully do for their juniors. The teachers on board of the receiving-ship gave little instruction, or none whatever; so that the expenditure was fruitless of great results. Many of the professors were able and willing, but the system was a bad one. The idea naturally suggested itself of seizing the time when the midshipmen are on shore and appropriating it to their culture. Instead of sending migratory professors to sea with each handful of midshipmen, the midshipmen themselves, in the intervals between sea-duty, might be collected in a body and devote their time to suitable instruction. For the pay of the instructors Congress has provided. In looking out for a modest shelter for the pupils, I was encouraged to ask for Fort Severn, at Annapolis. The transfer was readily made by order of the Secretary of War, and a school was immediately organized on an unostentatious and frugal plan. This institution, by giving some preliminary instruction to the midshipmen before their first cruise; by extending an affectionate but firm supervision over them as they return from sea; by providing them suitable culture before they pass to a higher grade; by rejecting from the service all who fail in capacity or in good disposition to use their time well, will go far to renovate and improve the American navy." The Naval Academy has done more than any other one influence "to renovate and improve the American navy," and it would be a most excellent thing for the civil government of the United States if the same

renovating and improving process could be applied in the same manner for the production of trained experts in government.

In his first annual address to Congress, President Washington, on January 8, 1790, said: "Among the many interesting objects which will engage your attention, that of providing for the common defense will merit particular regard. To be prepared for war is one of the most effectual means of preserving peace."¹ The maintenance of our army and navy is for the purpose of preserving peace. Let us see what measure of preparedness "*against*" war (to use the excellent distinction made by the Honorable A. P. Gardner) as a preservative of this peace the navy affords. In 1789, when the department was created, the navy consisted of 22 ships, 456 guns, and 3484 men. During the fiscal year ending June 30, 1914, the enlisted strength of the navy reached a total of 52,667 men, and in May, 1914, the navy's authorized complement, which had been short for several years, was completely filled.² The appropriations for the fiscal year 1914-15 for the naval establishment amounted to more than \$140,000,000. I am indebted to the Honorable Franklin D. Roosevelt, Assistant Secretary of the Navy, for the following summary of vessels in the navy on February 20, 1915: —

¹ *Messages and Papers of the Presidents*, vol. I, p. 65.

² *Report of the Secretary of the Navy for 1914*, p. 25.

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provides for the completion by 1918 of 4 battle cruisers, 8 small

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	<i>Italy</i>	<i>Austria-Hungary</i>
.....	1	1
.....	10	2
.....	19	15
rs..	137	80
.....	753	558
.....	73	175
.....	326	164
.....	259 (c)	84
.....	228	224 (h)
.....	107	141 (i)
.....	—	11
.....	340	387
.....	660	17,689 (j)
.....	—	—
.....	—	—
.....	9,913	19,531

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TABLE I. — VESSELS BUILT

	Battle ships, Dreadnought type (a)	Battleships (b)	Battle cruisers (c)	Armored cruisers	Cruisers (d)	Destroyers	Torpedo boats	Submarines	Coast defense vessels (e)
England	20	40	9 (k)	34	74 (k)	167 (k)	49	75 (k)	0
Germany	13	20	4	9	41	130	0	27	2
United States	8	22	0	11	14	51	13	30	4
France	4	18	0	20	9	84	135	64	1
Japan	2	13	2	13	13	50	27	13	2
Russia	0	7	0	6	9	91	14	30	2
Italy	3	8	0	9	6	32	68	19	0
Austria-Hungary ..	3	6	0	2	5	18	39	6	6

(a) Battleships having a main battery of all big guns (11 inches or more in caliber).

(b) Battleships of (about) 10,000 tons or more displacement, and having more than one caliber in the main battery.

(c) Armored cruisers having guns of largest caliber in main battery and capable of taking their place in line of battle with the battleships. They have an increase of speed at the expense of carrying fewer guns in main battery, and a decrease in armor protection.

(d) Includes all unarmored cruising vessels above 1500 tons displacement.

(e) Includes smaller battleships and monitors. No more vessels of this class are being proposed or built by the great powers.

(f) England has no continuing shipbuilding policy, but usually lays down each year 4 or 5 armored ships with a proportional number of smaller vessels.

TABLE II. — VESSELS BUILDING OR AUTHORIZED

	Battleships, Dreadnought type	Battle cruisers	Cruisers	Destroyers	Torpedo boats	Submarines
England (f)	16	1	17 (k)	21 (k)	0	22
Germany (g)	7	4	5	24	0	18
United States	4	0	0	11	0	19
France	8	0	0	3	0	22
Japan (h)	4	2	0	2	0	2
Russia (i)	7	4	8	44	0	19
Italy	7	0	2	15	2	8
Austria-Hungary ..	4	0	5	1	24	6

(g) Germany has a continuing shipbuilding programme, governed by a fleet law authorized by the Reichstag. For 1913 there are authorized 1 battleship, 1 battle cruiser, 2 cruisers, 12 destroyers. Eventual strength to consist of 41 battleships, 20 armored cruisers, 40 cruisers, 141 destroyers, 72 submarines.

(h) \$78,837,500 authorized to be expended from 1911 to 1917 for the construction of war vessels.

(i) Includes vessels of colonies.

(f) Russian shipbuilding programme provides for the completion by 1918 of 1 battle cruisers, 8 small cruisers, 36 destroyers, and 18 submarines.

The following vessels are *not* included in the tables:

Ships over twenty years old from date of launch, unless they have been reconstructed and returned within five years.

Torpedo craft over fifteen years old.

Transports, colliers, repair ships, converted merchant vessels, or any other auxiliaries.

Vessels of less than 1500 tons, except torpedo craft. Torpedo craft of less than 50 tons.

NOTE. — Vessels undergoing trials are considered as completed.

ACTIVE PERSONNEL

TABLE III

Rank	England	Germany	United States	France	Japan	Russia	Italy	Austria Hungary
Admirals of the Fleet	3	2	1 (a)	—	2	—	—	—
Admirals	12	6	—	—	6	12	1	4
Vice-Admirals	22	12	—	15	19	20	10	2
Rear-Admirals	58	22	25 (g)	30	38	21	19	15
Captains and Commanders ..	702	154	212	360	270	346	137	80
Other line officers	2,508	2,220	1,680	1,419	1,965	1,378	753	558
Midshipmen at sea	639	448	—	77	119	—	73	175
Engineer officers	837	577	—	505	811	538	326	164
Medical officers	593	330	336	390 (c)	364 (f)	285	259 (c)	84
Pay officers	750	276	231	211	388	—	228	224 (h)
Naval Constructors	122	162	75	187	135 (k)	519	107	141 (i)
Chaplains	117	30	24	—	—	85	—	11
Warrant officers	2,740	3,183	867	147 (d)	1,569	—	1,340	387
Enlisted men	119,597	65,797	52,566	60,505	50,050	49,258	36,660	17,689 (j)
Marine officers	465	177 (e)	344	—	—	—	—	—
Enlisted men (Marines)	21,414 (b)	5,791 (e)	9,915	—	—	—	—	—
Total	150,609	79,197	66,273	63,846	55,736	52,463	39,913	19,531

(a) The Admiral of the Navy.

(b) Includes 3130 men of the Coast Guard.

(c) Includes pharmacists.

(d) Includes adjutants principaux; does not include premier maitres and maitres.

(e) Marine infantry and seaman artillery.

(f) Includes pharmaceutical officers.

(g) The United States now has, temporarily, as extra numbers, due to promotion for war service.

ice, and to officers restricted by law to engineering duty on shore only, 6 flag officers, 20 captains, 9 commanders, 6 lieutenant commanders, and 1 lieutenant.

(h) Includes 21 officers of the Judge Advocate Corps.

(i) Includes 4 hydrographic engineers.

(j) Includes 4000 recruits for 42 days.

(k) Includes 50 ordnance and 10 hydrographic engineers.

NOTE. — In the table published December 1, 1913, the number of captains and commanders given was 356 and other line officers 1841. This apparent discrepancy was due to the inclusion of 213 Korvetten Kapitane (lieutenant commanders) with the captains and commanders. In the above table the Korvetten Kapitane (226) are included with the other line officers. Under Italy the number of vice-admirals given was 18; this was a typographical error and should have been 8.

*Office of Naval Intelligence,
Navy Department*

LY		AUSTRIA-HUNGARY			
<i>Building</i>		<i>Built</i>		<i>Building</i>	
<i>Number</i>	<i>Tons (estimated)</i>	<i>Number</i>	<i>Tons</i>	<i>Number</i>	<i>Tons (estimated)</i>
7	187,150	3	60,030	4	93,510
—	—	6	74,613	—	—
—	—	6	41,700	—	—
—	—	—	—	—	—
—	—	2	13,380	—	—
2	4,888	5	13,815	5	21,216
15	14,203	18	9,450	—	—
2	272	39	6,852	24	5,886
8	5,842	6	1,686	6	5,370
—	212,355	—	221,526	—	125,982
,815		347,508			

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within five years.

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July 1, 1914

WARSHIP TONNAGE OF THE PRINCIPAL NAVAL POWERS

NUMBER AND DISPLACEMENT OF WARSHIPS, BUILT AND BUILDING, OF 1500 OR MORE TONS, AND OF TORPEDO CRAFT OF MORE THAN 50 TONS

Office of Naval Intelligence,
Navy Department

TYPE OF VESSEL	GREAT BRITAIN*				GERMANY				UNITED STATES*				FRANCE				JAPAN				RUSSIA				ITALY				AUSTRIA-HUNGARY			
	Built		Building		Built		Building		Built		Building		Built		Building		Built		Building		Built		Building		Built		Building		Built		Building	
	Number	Tons	Number	Tons (estimated)	Number	Tons	Number	Tons (estimated)	Number	Tons	Number	Tons (estimated)	Number	Tons	Number	Tons (estimated)	Number	Tons	Number	Tons (estimated)	Number	Tons	Number	Tons (estimated)	Number	Tons	Number	Tons (estimated)	Number	Tons	Number	Tons (estimated)
Battleships* (Dreadnought type)	20	423,350	16	421,750	13	285,770	7	187,161	8	189,650	4	117,800	4	92,368	8	193,656	2	41,600	4	122,400	—	—	7	159,409	3	62,644	7	187,150	3	60,030	4	93,510
Battleships* (Pre-dreadnought)	40	589,385	—	—	20	242,800	—	—	22	309,282	—	—	18	262,675	—	—	13	191,380	—	—	7	98,750	—	—	8	96,100	—	—	6	74,613	—	—
Coast-defense vessels*	—	—	—	—	2	8,168	—	—	4	12,900	—	—	1	8,800	—	—	2	9,086	—	—	2	10,380	—	—	—	—	—	—	6	11,700	—	—
Battle cruisers*	9	187,800	1	28,500	4	88,749	4	112,000	—	—	—	—	—	—	—	—	2	55,000	2	55,000	—	—	4	128,000	—	—	—	—	—	—	—	—
Armored cruisers	34	400,800	—	—	9	94,245	—	—	11	149,295	—	—	20	201,724	—	—	13	138,483	—	—	6	63,500	—	—	9	74,020	—	—	2	13,380	—	—
Cruisers*	74	382,815	17	67,000	41	150,747	5	26,900	14	66,410	—	—	9	46,095	—	—	13	57,915	—	—	9	52,845	8	53,600	6	18,830	2	4,888	5	13,815	5	21,216
Torpedo boat destroyers	167	125,850	21	21,770	130	67,091	24	14,400	51	35,068	11	11,956	84	35,812	3	2,653	50	20,487	2	1,676	91	36,748	44	53,664	36	16,807	15	14,203	18	9,450	—	—
Torpedo boats	40	14,488	—	—	—	—	—	—	13	2,528	—	—	135	13,426	—	—	27	3,017	—	—	14	2,132	—	—	68	11,584	2	272	39	6,852	21	5,886
Submarines	75	30,362	22	17,236	27	14,140	18	14,400	30	—	19	—	64	27,940	22	14,766	13	2,672	2	1,200	30	6,506	19	13,284	19	5,475	8	5,842	6	1,686	6	5,370
Total tons built and total tons building	—	2,157,850	—	556,256	—	951,713	—	354,864	—	765,133	—	129,756	—	688,840	—	211,075	—	519,640	—	180,276	—	270,861	—	407,957	—	285,460	—	212,355	—	221,526	—	125,982
Total tons built and building	—	2,714,106	—	—	—	1,306,577	—	—	—	894,889	—	—	—	899,915	—	—	—	699,916	—	—	—	678,818	—	—	—	497,815	—	—	—	347,508	—	—

RELATIVE ORDER OF WARSHIP TONNAGE			
Present order (tonnage completed)		As would be the case if vessels now building were completed	
Nation	Tonnage	Nation	Tonnage
Great Britain	2,157,850	Great Britain	2,714,106
Germany	951,713	Germany	1,306,577
United States	765,133	France	899,915
France	688,840	United States	894,889
Japan	519,640	Japan	699,916
Italy	285,460	Russia	678,818
Russia	270,861	Italy	497,815
Austria-Hungary	221,526	Austria	347,508

¹ Battleships having a main battery of all big guns. (11 inches or more in caliber.)² Battleships of (about) 10,000 or more tons displacement, whose main batteries are of more than one caliber.³ Includes smaller battleships and monitors.⁴ Armored cruisers having guns of largest caliber in main battery and capable of taking their place in line of battle with the battleships. They have an increase of speed at the expense of carrying fewer guns in main battery and a decrease in armor protection.⁵ All unarmored warships of more than 1500 tons are classed as cruisers. Scouts are considered as cruisers in which battery and protection have been sacrificed to secure extreme speed. The word "protected" has been omitted because all cruisers except the smallest and oldest now have protective decks.⁶ Colonial vessels included.⁷ Includes 3 submarines authorized in 1913; contract for fourth not yet awarded.⁸ Does not include Idaho and Mississippi, recently sold, or ships of current programme for which contracts have not been awarded.

The following vessels are not included in the tables:

Ships over twenty years old from date of launch, unless they have been reconstructed and retained within five years.

Torpedo craft over fifteen years old.

Those not actually begun or ordered, although authorized.

Transports, colliers, repair ships, torpedo depot ships, or other auxiliaries.

Vessels of less than 1500 tons, except torpedo craft.

Torpedo craft of less than 50 tons.

Vessels undergoing trials are considered as completed.

SUMMARY OF VESSELS IN THE UNITED STATES
NAVY, FEBRUARY 20, 1915

Type	Fit for service, including those under repair		Under construction		Authorized		Total	
	Number	Displace- ment (tons)	Number	Displace- ment (tons)	Number	Dis- place- ment (tons)	Number	Displace- ment (tons)
Battleships, 1st line	10	221,650	7	213,800			17	435,450
Battleships, 2d line	23	308,146					23	308,146
Armored cruisers ..	10	140,080					10	140,080
Cruisers, 1st class..	5	46,465					5	46,465
Cruisers, 2d class..	4	25,065					4	25,065
Cruisers, 3d class..	15	48,748					15	48,748
Monitors.....	9	32,944					9	32,944
Destroyers.....	50	33,995	12	12,992	6	6,660	68	53,647
Torpedo boats.....	19	3,365					19	3,365
Submarines.....	36	12,440	22	11,788			58	24,228
Tenders to torpedo vessels.....	7	20,892	2	10,730			9	31,622
Gunboats.....	30	27,890					30	27,890
Transports.....	5	26,595	1	10,000			6	36,595
Supply ships.....	4	25,400	1	8,500			5	33,900
Hospital ships.....	2	9,000					2	9,000
Fuel ships.....	22	*232,401	2	29,000			24	*261,401
Converted yachts..	16	9,476					16	9,476
Tugs.....	45	18,024					45	18,024
Special type.....	8	43,333					8	43,333
Unserviceable for war purposes....	20	45,101					20	45,101
Total.....	340	*1,331,010	47	296,810	6	6,660	393	*1,634,480

* Excepting the Justin.

I am also indebted to Mr. Roosevelt for the accompanying comparative tables of foreign navies prepared by the Office of Naval Intelligence as of July, 1914. "No attempt," Mr. Roosevelt advised me on March 15, 1915, "has been made to bring these up to date, owing to the conflicting reports of losses and new construction during the war."

Whether or not the United States possesses an adequate navy is at present a much-mooted question, but a discussion of this question is outside the limits of this

book. From the latest recommendations of the experts in the Navy Department the layman would be led to believe that our navy is at the present time not entirely satisfactory to the men among us who should be best qualified to express an opinion. If there is *any* serious question of the adequacy of our army and navy for the purpose of the Federal Government, every sane citizen of the United States should advise himself upon this serious question and see that the conclusion he forms becomes an effective part of that public opinion of the nation which causes Congress and the Federal Executive to take action.¹

¹ I wrote the above in February, 1915. When I corrected the proof on February 7, 1916, I found, unfortunately, no need for revision. A National Security Congress was held in Washington, January 20, 21, and 22, 1916, under the auspices of the National Security League, and I attended this Congress as a delegate. In a letter to this Congress, ex-President Roosevelt said: "For eighteen months, with this world-cyclone before our eyes, we as a nation have sat supine without preparing in any shape or way. It is an actual fact that there has not been one soldier, one rifle, one gun, one boat, added to the American army or navy, so far, because of anything that has occurred in this war, and not the slightest step has yet been taken looking toward the necessary preparedness." At the dinner, given by the National Security Congress on January 22, Senator Henry Cabot Lodge of Massachusetts, said: "I served in the House some years ago, on the Naval Committee. I am at this moment an unworthy member of the Senate Committee on Naval Affairs, and I have tried to inform myself in regard to the navy. . . . There is the shortage of men. The Secretary has sent in the report of Admiral Fletcher, made on the 15th of August last, and in that he describes the shortage of men. At the June inspection one division was short 1350 men. . . . We have no scouts. We have no fast battle cruisers. The Bluecher, which was sunk in the North Sea, was sunk because she was the slowest of the German ships. She was faster than any ship in our navy." Criticizing the slowness

In addition to the Departments of War and the Navy, the Department of Justice most certainly exercises its functions for the purpose of "insuring domestic tranquillity." The Judiciary Bill was debated in the Senate in July, 1789. This bill, which had been prepared by a committee of which Charles Carroll of Carrollton was a member, was bitterly opposed by some of the members of the Senate. "I opposed this bill from the beginning," writes William Maclay. "It certainly is a vile law system, calculated for expense and with a design to draw by degrees all law business into the Federal Courts. The Constitution is meant to swallow all the State Constitutions by degrees and thus to swallow, by degrees, all the State Judiciaries." ¹ The "meet person," for whose appointment as Attorney-General this act provided, to-day has charge of executive and administrative matters of a nature which might be held to give some color of reason to Senator Maclay's prediction. I have already discussed the development of the office of Attorney-General. Its functions are of very great interest.

The department as it exists to-day performs two sorts

in building submarines, he said: "The Schley was the first one authorized. It was authorized on the 30th of June, 1914. The contract was let the following March — March of 1915. In the bulletin of January 10, 1916, it appears that nothing has been done upon her yet. How long do you think is the contract time for the Schley, the first of our sea-going submarines? I was astonished when I found out. Thirty-six months, three years! She is not contracted to be delivered until March, 1918, and if we want submarines, we want them now."

¹ *Journal of William Maclay*, p. 117.

of duties. It has certain functions relating to the courts of the United States, and it is the Law Department of the United States. The Attorney-General, the fourth member of the Cabinet, is the head of the department. While he has no control over the judges who constitute the judiciary, he assists the President in their appointment. The clerks of the courts are appointed by the judges, but United States marshals, whose duties correspond to those of a sheriff in a state court, are appointed by the President upon the advice of the Attorney-General. The judges, the clerks, and the marshals are all members of the Department of Justice, and the accounts of the judges and clerks are under the supervision of the Attorney-General. Some knowledge of the organization of the courts is necessary to an understanding of the work of the department, but a discussion of the functions of the courts is not within the scope of this book. It will be a matter of surprise to many people to learn that the department has anything to do with the courts, except as prosecutor; but as the department has developed, its head has come, more and more, to hold a position analogous to that held by the Minister of Justice of many European Governments. The relation of the department to the courts, however, extends only to matters of administration. It has no control over the judgments of the courts, although in the matter of the amount of fines or the length of imprisonment in federal cases, the district attorneys are usually consulted by the judges, and all matters of applications for pardons or paroles are passed upon by

the department before the President extends his clemency. After I have given a brief account of the courts, I shall take up the organization of the Department of Justice.

The United States is divided into nine judicial circuits. The First Circuit comprises Maine, New Hampshire, Massachusetts, and Rhode Island. The Second Circuit is composed of Vermont, New York, and Connecticut; while Pennsylvania, New Jersey, and Delaware make up the Third Circuit. The Fourth Circuit, in addition to Virginia and Maryland, contains West Virginia and North and South Carolina. The Fifth Circuit covers a great deal of territory, including these States: Texas, Louisiana, Mississippi, Alabama, Florida, and Georgia. The Sixth Circuit is peculiar in shape, running from north to south, and includes Michigan, Ohio, Kentucky, and Tennessee. Wisconsin, Illinois, and Indiana are in the Seventh Circuit; while the Eighth Circuit is composed of thirteen States — Arkansas, Missouri, Iowa, Minnesota, North and South Dakota, Nebraska, Kansas, Oklahoma, New Mexico, Colorado, Wyoming, and Utah. The Ninth Circuit takes in Alaska and Hawaii, as well as the States on the Pacific Coast of Washington, Oregon, and California. Montana, Idaho, Nevada, and Arizona are also in this circuit. Porto Rico, although a part of the United States, is not in any of the nine circuits.

At the head of each of the circuits is one of the nine justices of the Supreme Court, who is nominally the presiding judge of the circuit. Each of these circuits is

divided into federal districts, of which there are eighty-seven. No State is less than a federal district and some great States like New York are divided into several districts. In each of these is a District Court, with its judge, clerk, attorney, marshal, and other officers, and in these District Courts all violations of the laws of the United States are primarily prosecuted. From the District Courts appeal may be taken to the Circuit Courts of Appeals, of which there is one in each of the nine circuits, and from these Circuit Courts of Appeals, in certain cases, there may be a further appeal to the Supreme Court, with its nine judges sitting in Washington. There are thirty-four circuit judges, and ninety-one district judges. The latter sit both in the District Courts and in the Circuit Courts of Appeals. Other courts of the United States are the Court of Claims, with five judges in Washington, and the courts of the District of Columbia, with seventeen judges. There are, also, thirty-four judges in Territorial Courts.

The Attorney-General and the officers who are directly responsible to him have charge of the preparation and conduct of all cases in which the United States is concerned. In each of the federal districts there is a federal grand jury or inquest, which investigates all violations of the criminal laws of the United States, and United States commissioners, who hold a position analogous to committing magistrates or justices of the peace. It may be of interest here to note the manner in which criminal cases come before the District Courts. A district attorney may, upon his own responsibility,

cause the arrest of any person accused of an infraction of the federal laws, or the grand jury may itself originate an investigation, and, without the suggestion of the department, find an indictment; but usually information concerning a violation of the law is reported to some one of the district attorneys or to the department in Washington by one of the other executive departments. The Treasury Department has its "secret service" for the detection of counterfeiting and other allied matters, the Post-Office Department has numerous post-office inspectors, while there are internal revenue agents, national-bank examiners, and a host of other investigators, beside the agents of the Bureau of Investigation of the Department of Justice. Usually, a warrant for the arrest of the accused person is issued by one of the United States commissioners, of whom there are several in each district. The accused is then given a public hearing before the commissioner, who may dismiss the charges if he deems them unsupported or if the accused offers sufficient evidence to excuse his action. If the commissioner considers there is sufficient evidence of a crime, the accused is held for the action of the grand jury, which sits in secret to hear the government case, in order that no man may be subjected to the ignominy of a public trial unless there appears to be a strong *prima-facie* case against him. Sometimes the grand jury takes up a case and finds an indictment without any previous arrest or any hearing before a commissioner; but since the grand jury is composed of twenty-three reputable and often promi-

nent members of the community and the vote of twelve of them is necessary for the finding of an indictment, the rights of the accused are most carefully protected. When an indictment is presented to the court, so carefully has the case been examined that it is often said that when a person is indicted in the federal court he had best plead guilty promptly and receive the smaller penalty that such action usually merits.

The Department of Justice, as the Law Department of the United States Government, may be divided into three general divisions, headquarters of the Attorney-General in Washington, department solicitors and attorneys in Washington and New York, and the district attorneys. All of these are the direct subordinates of the Attorney-General. At headquarters in Washington, besides the Attorney-General are the Solicitor-General, the Assistant to the Attorney-General, six Assistant Attorneys-General, numerous special assistants to the Attorney-General, attorneys, permanent assistant attorneys, and law clerks. In addition to these is a large force, including the Chief Clerk and Superintendent of Buildings, Private Secretary, Superintendent and Assistant Superintendent of Prisons, Appointment Clerk, Attorney in Charge of Pardons, Disbursing Clerk, Attorney in Charge of Titles, Assistant Examiners, Chief of Division of Investigation, Chief of Division of Accounts, Chief Bookkeeper, Librarian, stenographers, clerks, etc.

The second division consists of the department solicitors and attorneys. In Washington there are the

Solicitor for the Post-Office Department, the Assistant Attorney-General for the Department of the Interior, the solicitors and assistants for the Departments of State, the Treasury, and Commerce, and the Solicitor of Internal Revenue. In New York there is an Assistant Attorney-General in charge of the Customs Division, with one Deputy Assistant Attorney-General, five attorneys, and seven special attorneys.

The third division of the department comprises the eighty-seven district attorneys, one hundred and seventy-five assistant district attorneys (approximately), and one hundred (approximately) special assistant attorneys in the various parts of the United States.¹ The Attorney-General, as head of the Department of Justice and chief law officer of the Government, represents the United States in all matters involving legal questions. He gives advice and opinions, when they are required by the President or by the heads of the other executive departments, on questions of law arising in the administration of their respective departments, and appears personally in the Supreme Court of the United States in cases of especial gravity and importance. He exercises a general superintendence and direction over United States attorneys and marshals in all judicial districts in the United States and Territories, and provides special counsel for the United States whenever required by any department of the Government.

The Solicitor-General assists the Attorney-General

¹ *Register of the Department of Justice*, 1915.

in the performance of his departmental duties, and by special provision of law, in case of a vacancy in the office of Attorney-General, or of his absence or disability, exercises all those duties. Under the direction of the Attorney-General, he has special charge of the business of the Government in the Supreme Court of the United States, and is assisted in the conduct and argument of cases therein by the Assistant Attorneys-General. He also, with the approval of the Attorney-General, prepares opinions rendered to the President and the heads of the executive departments, and confers with and directs the law officers of the Government throughout the country in the performance of their duties. When the Attorney-General so directs, any case in which the United States is interested, in any court of the United States, may be conducted and argued by the Solicitor-General, and he may be sent by the Attorney-General to attend to the interests of the United States in any state court, or elsewhere.

The Assistant to the Attorney-General, popularly known as the "Chief Trust Buster," has special charge of all suits and other matters arising under the Federal Anti-Trust and Interstate Commerce Laws, and has under his direction a large number of special assistants to the Attorney-General who have personal direction of the big anti-trust cases.

The several Assistant Attorneys-General assist the Attorney-General in the performance of his duties, and especially in the argument of cases in the Supreme Court and in the preparation of legal opinions. One

Assistant Attorney-General is charged with defending suits in the Court of Claims and one with the defense of Indian depredation claims, while another is in charge of the interests of the Government in all matters of reappraisement and classification of imported goods in litigation before the several boards of United States General Appraisers.

The Assistant Attorneys-General and the solicitors for the several executive departments, under the provisions of sections 349-50, Revised Statutes, exercise their functions under the supervision and control of the Attorney-General. They are the Assistant Attorney-General for the Department of the Interior, the Solicitor for the Department of State, the Solicitor for the Treasury, the Solicitor of Internal Revenue, the Solicitor for the Post-Office Department, and the Solicitor of the Department of Commerce.

The Assistant Attorney-General for the Interior Department is the chief law officer of that department. All appeals from the General Land Office are sent to his office for consideration. Oral arguments are heard by him in the more important cases, or by brief; and decisions are prepared under his supervision for the signature of the Secretary or First Assistant Secretary, as the case may be. He is aided in this and his other work by a number of assistant attorneys.

The Solicitor for the Department of State advises the Secretary and Assistant Secretaries upon questions of municipal and international law referred to him, passes upon claims of citizens of the United States

against foreign Governments, claims of subjects or citizens of foreign Governments against the United States, and upon applications for the extradition of criminals. The Assistant Solicitor, who acts as Solicitor in the absence of the latter, has general charge of extradition and citizenship matters.

The Solicitor of the Treasury is charged with the supervision of much of the litigation of the Government and gives the necessary instructions to United States attorneys, marshals, and clerks of courts in proceedings appertaining to the suits under his superintendence. Among his other duties he makes recommendations on offers of compromise (except in post-office cases and in internal-revenue cases before judgment), approves the bonds of United States assistant treasurers, collectors of internal revenue, and department disbursing clerks, and examines all official bonds filed in the Treasury Department. He also issues distress warrants against delinquent collectors and other officers receiving public money, and, as the law officer of the Treasury Department, gives legal advice to the Secretary and other officers.

A Solicitor of Internal Revenue was added to the Internal Revenue Office corps by the Act of July 13, 1866,¹ but by the Act of June 22, 1870,² organizing the Department of Justice, the Solicitor was formally transferred to that department. He is the law officer and legal adviser of the Commissioner of Internal Revenue. The only duties of his of which mention is made

¹ 14 U.S. Stat. L. 170.

² 17 U.S. Stat. L. 162.

by the law are in connection with internal revenue compromise cases.¹

The Solicitor of the Department of Commerce, as the legal adviser for the Secretary and the chiefs of the various bureaus, prepares and examines all contracts and bonds entered into or required by the department, and renders such legal services in connection with matters arising in the administrative work as may be required of him by the Attorney-General.

The Public Lands Division was created by the Attorney-General November 16, 1909. To it are assigned all suits and proceedings concerning the enforcement of the public land law, including suits or proceedings to set aside conveyances of allotted lands. The duties of the disbursing clerk of the department show the extent of its functions. He disburses funds from more than forty appropriations under the direction of the Attorney-General, including the salaries of the justices of the Supreme Court, the judges of the other United States Courts, the United States attorneys, marshals, and other court officials, and of the officials of the department proper. He also disburses the contingent expenses of the department, and other miscellaneous appropriations.

The superintendent of prisons has charge of all matters relating to United States prisons and prisoners, including their support in both state and federal penitentiaries, in reform schools, and in county jails, and is *ex-officio* president of the boards of parole for the

¹ U.S. Rev. Stat., sec. 3229.

United States penitentiaries and the president of the board of parole for United States prisoners in each State or county institution used for their confinement.

The appointment clerk has charge of all matters relating to applications, recommendations, and appointments, and prepares commissions and appointments for the officers and employees of the department in Washington, and for United States judges, attorneys, and marshals, and other officers under the department. There are also the attorney in charge of pardons and the attorney in charge of titles of lands belonging to or sought to be acquired by the Government for public purposes. There are two remaining divisions which require notice. The Division of Accounts examines accounts payable from judiciary appropriations, including accounts of United States marshals, attorneys, clerks, and commissioners. The Division of Investigation has general supervision of the examination of the offices and records of the federal court officials throughout the United States, and directs the work of all the special agents and accountants of the department employed to collect evidence or to make investigations of any kind.

The Department of Justice stands in the same relation to the United States as the law department of any great corporation stands to the corporation. It handles all the law matters of the United States Government, both civil and criminal. The civil matters of the Government are much the same as the ordinary business questions presented to the law department of any great

corporation, — suits on surety bonds, suits for breach of contracts for public buildings, and all manner of civil cases. Wherever a right of the United States or one of its criminal laws is violated, the department takes charge of the claim of the Government or prosecutes the offender. Certain classes of offenses may cause both civil and criminal procedure on the part of the United States, as in the case of prosecutions under the Sherman Anti-Trust Act. This act provides that where a combination exists in restraint of trade unlawfully, the United States may institute civil proceedings to dissolve the combination, and at the same time may proceed criminally against the individual offenders. An important example of both civil and criminal prosecutions is found in the cases against the so-called "Bath-Tub Trust." It was alleged by the Government that a combination of individuals and corporations had combined illegally to raise prices. A civil proceeding having for its purpose the dissolution of the combination was instituted in the United States Circuit Court for Maryland, while at the same time criminal proceedings by way of indictment were brought in the Eastern District of Michigan. The civil proceedings terminated in the dissolution of the combination. The criminal proceedings resulted in a disagreement of the trial jury. Violations of the customs laws and of the internal-revenue laws also give rise to both civil and criminal proceedings.

The criminal work of the Department of Justice is by far the most unique and interesting. The United

States has a Criminal Code which was re-codified December 1, 1909. In this Criminal Code most of the crimes against the United States are dealt with, but outside of the code are numerous important laws, among which are the so-called White-Slave Act and the Pure Food and Drug Act.

It must be remembered that the Department of Justice deals only with violations of federal laws. It has nothing to do with local offenses, which are taken care of by the authorities of the various States. Murder, arson, rape, and the usual felonies and misdemeanors are taken care of, save in certain unusual circumstances, by the prosecuting attorneys of cities or counties who are state officers. It will be interesting, in order that the character of federal cases may be understood, to look at the headings of some of the chapters of the Criminal Code. The offenses are classified in the chapters according to their nature; for instance, offenses against the existence of the Government are treason, inciting or engaging in rebellion or insurrection, criminal correspondence with foreign Governments, seditious conspiracy, etc. Offenses against other nations are mostly those which present violations of neutrality, such as arming vessels against people at peace with the United States, or enlisting or equipping expeditions against such people. There are laws to protect the elective franchise and civil rights of citizens. A very interesting decision in reference to this class of cases was one recently rendered by the United States District Court for Maryland, holding that the use of trick bal-

lots in elections, with the purpose to make it more difficult for negro voters to exercise their right of franchise, came under one of these sections. In this particular case the ballots were so arranged that the name of the favored candidate appeared always in the first place, while the names of the other three candidates appeared sometimes second, sometimes third, and sometimes fourth.

The class of offenses, such as bribery of an officer of the United States, injuries to fortifications, harbor defenses, etc., stealing public property, falsely pretending to be an officer of the United States, are all classed as offenses against the operation of the Government. Then there are a number of laws to prevent perjury in trials in the United States Courts, bribery of jurors, judges, or witnesses, and other offenses, in order that public justice may not be interfered with. Offenses against the currency include counterfeiting bank-notes and coins and similar abuses of the currency. A most important class of cases arises under the laws for the protection of the postal service. Offenses against foreign and interstate commerce, against the slave trade and peonage, and even the old-fashioned offense of piracy are dealt with at times by the Department of Justice.

CHAPTER IX

FUNCTIONS OF THE EXECUTIVE DEPARTMENTS "IN PROMOTING THE GENERAL WELFARE"

THE DEPARTMENTS OF AGRICULTURE, COMMERCE, AND LABOR

IN his third annual address to Congress on October 25, 1791, Washington said: "The completion of the census of the inhabitants for which provision was made by law has been duly notified (excepting one instance in which the return has been informal, and another in which it has been omitted or miscarried), and the returns of the officers who were charged with this duty, which will be laid before you, will give you the pleasing assurance that the present population of the United States borders on 4,000,000 persons." ¹ The United States to-day has about 101,208,315 inhabitants, and the problems of promoting the general welfare are very different from what they were in the days of Washington's first Administration. The Departments of Agriculture, Commerce, and Labor are the three departments most nearly concerned with the general welfare of the material interests of the nation, and we will briefly note the functions of these departments.

In Switzerland there is one executive department which deals with commerce, industry, and agriculture.

¹ *Messages and Papers of the Presidents*, vol. I, p. 106.

In France and in the United States there are three separate departments dealing in a general way with these same matters, and designated the Departments of Agriculture, Commerce, and Labor. An examination of the duties assigned to these various departments, in connection with those of the Department of the Interior, forces us to the conclusion that the distribution of executive functions between the Departments of the Interior, Agriculture, Commerce, and Labor in the Federal Government is not very logical. The work of the Weather Bureau, the Bureau of Animal Industry, of Plant Industry, of Chemistry, of Soils, of Entomology, of Biological Surveys, of Crop Estimates, of Markets and Rural Organization, and the Office of Experiment Stations are all part of the functions which one would properly expect to be under the supervision of the Department of Agriculture. The Forestry Service and the Office of Public Roads are also in the Department of Agriculture, but they might just as well be in the Interior Department, or perhaps in the Post-Office Department. Care of the nation's forests would seem to belong to the Department of the Interior, and as to public roads, the Postmaster-General is claiming more and more a power of supervision. Both the Office of Public Roads and the Forest Service, however, have distinct educational aspects which might very properly place them under the Bureau of Education in the Interior Department. In the Department of Commerce, which we shall also consider in this chapter, the divisions are of two sorts. The Bureaus of Foreign and

Domestic Commerce, of Standards, of Fisheries, of Lighthouses, and of Navigation, as well as the Coast and Geodetic Survey and Steamboat Inspection Service, all relate to commerce. The Bureau of Corporations, now merged in the Federal Trade Commission, dealt with a different class of matters from those above enumerated; but corporations, especially in reference to interstate commerce, are commercial, and therefore the Department of Commerce was as appropriate a place for the Bureau of Corporations as any other of the executive departments. The Bureau of the Census is the last of the divisions of the Department of Commerce. It would seem that the census might more properly have remained in the Interior Department, since it concerns the personnel of the citizens of the nation, or perhaps have been placed in the Department of Labor, whose Bureaus of Immigration and Naturalization also deal with the personnel of the United States. The "General Welfare" departments are those of Agriculture and of Commerce, and the Department of Labor, which last, in addition to immigration and naturalization, deals with labor statistics as to children, both of which subjects are closely allied to the census. From this summary of the functions of the Departments of Agriculture, of Commerce, and of Labor, we can see that each of these departments deals primarily with the matters denoted by its name, that the functions of each, in many instances, refer to the same class of matters, and that there is no very strict rule of classification underlying the distribution of their functions.

In his first report to the President, in 1849, Thomas Ewing, Secretary of the Interior, recommended the organization of a Bureau of Agriculture. From 1839 there had existed an Agricultural Division in the Patent Office, and appropriations had been made for the collection of agricultural statistics including the purchase of seeds, which remains to-day as one of the best-known functions of the Department of Agriculture to the general mass of American citizens. We have already noted that the agricultural interests of the Government were for a time one of the miscellaneous cares of the Secretary of the Interior. By the Act of May 16, 1862,¹ however, the Department of Agriculture was established as an independent bureau or office. It was not, however, at that time, one of the great executive departments presided over by a member of the Cabinet, but in 1889 it was raised to the rank of an executive department and its chief official became a member of the President's Cabinet as Secretary of Agriculture. It is a curious coincidence that in the same year, 1889, a new Department of State having similar duties was created in the English Government. The Board of Agriculture, to which I have referred as one of the five principal boards in the executive department of the English Government, was created to attend to matters that were transferred to it from various commercial and other bodies connected with the English Government. The Board of Agriculture in England has to do with various matters relating to the ancient land ten-

¹ 12 U.S. Stat. L. 387.

ures and allotments to laborers. "The control of fisheries, the promotion of agriculture, and the prevention of contagious diseases among animals are also placed under its care," writes Mr. Lowell, "and it has been given power or rather authority to muzzle dogs and destroy the Colorado beetle." ¹ Fisheries, with us, are under the supervision of the Department of Commerce, but the promotion of agriculture and the prevention of contagious diseases among animals are among the principal functions of the Department of Agriculture.

There are twelve principal subdivisions of the Department of Agriculture, all of which are under the general supervision of the Secretary. All these twelve subdivisions relate, more or less, to agriculture, but, as I have pointed out, the Forest Service and the Office of Public Roads concern also other departments of the Government. There is no question, however, that both the Forest Service and the Office of Public Roads exercise very important duties in reference to the general welfare of the nation. We will note the duties of these last two divisions, however, before examining the more purely agricultural divisions of the department.

The Forest Service has entire charge of the National Forests of the United States, which are in themselves a great asset and a very important resource of the nation, not only for material products, but in relation to climatic conditions. The Forest Service was instituted for the purpose of studying forest conditions and methods of forest utilization. It investigates the vari-

¹ *The Government of England*, vol. I, p. 111.

pus properties of different kinds of woods and studies the methods of manufacturing and making salable the products of the forest. At the close of the year 1914, exclusive of land not the property of the Government, the area in forests was slightly over 165,000,000 acres. The National Forests have an immense property value, and there are, in addition, privately owned forests, the value of whose annual production reaches an enormous sum. On the continent of Europe, especially in Germany, one finds forests, planted and tended with the same care as a potato patch, which produce large annual revenues. Lumbering in the United States in the past has involved enormous waste, and even at the present time little of the private timber is handled in such a way as to protect a future crop. One of the duties of the Bureau of Animal Industry is to improve the meat supply of the country. The public grazing lands in the United States, part of which are in the National Forests, embrace about 300,000,000 acres. The Forest Service has inaugurated a system by which annual grazing permits are required before the grazing lands in the National Forests can be used, and with the very low grazing fees now charged, the Government receives over a million dollars a year from this source of revenue alone. While the chief task of the Department of Agriculture in reference to forestry relates to the administration of the National Forests, the Forest Service devotes itself in every way to the improvement of timber and forest conditions throughout the nation.

~ In the same manner as the Forest Service studies

everything relating to the general welfare of forestry interests in the United States, so the Office of Public Roads studies systems of road-management and methods of road-building. It details engineers to various parts of the country to assist the officials of States, or counties, or townships in building model roads, and it builds in various parts of the country experimental roads in order to test the value of various road-building materials. I have already pointed out that it conducts a one-year post-graduate course in highway engineering and it also investigates one of the most important questions which to-day confront road-builders, that of the comparative effect of motors and horse traffic on roads. Rural transportation is at the present time in the process of revolution. Mechanically driven vehicles are rapidly taking the place of wagons drawn by horse or mule power. In the red-clay districts of the Carolinas and Georgia, the "horseless carriage," as the mule team is sometimes called, is a necessity because of the heavy roads which make motor vehicles impossible; but all through the country are rapidly being built improved roads of a modern type, and the motor-driven vehicle, which is yearly becoming less expensive, is gradually becoming the prevailing means of transportation in the rural communities. The road, however, which is best suited to motor-driven vehicles is dangerous and never well suited to horses or other animals, and the Office of Public Roads coöperates with state highway officials in showing model types of roads, culverts, bridges, and road machines which can best pro-

mote rural transportation. The office also coöperates with the Post-Office Department in carrying out the duties of that department relating to the improvement of post-roads. There is a director of public roads, together with various officials in charge of construction, road economics, roads in National Parks, and forests and other matters relating to the office.

From the point of view of this book the main work of the Department of Agriculture may be very briefly summarized. Beside the Forest Service and the Office of Public Roads, there are ten bureaus or offices which deal with essentially agricultural matters. The state of the weather is important to everybody for all purposes, but it is especially important to the agriculturist. The Weather Bureau attempts to forecast the weather and it issues warnings as to floods and frosts and cold waves and storms. It also keeps a watchful eye over the weather for the benefit of commerce and navigation, and through its telegraph and telephone lines gives advice to mariners. It can hardly be said that the Weather Bureau performs functions which belong exclusively to agriculture, since the matters with which it deals relate so much to the general life of the people of the country. The Department of Justice frequently finds it necessary to call upon the Weather Bureau for its records of the weather on certain occasions in reference to pending litigation, and the work that the bureau does and the instruments it uses in taking meteorological and other observations in reference to the weather and the climate are of a most intricate nature.

The Bureau of Animal Industry and that of Plant Industry indicate the sort of duties they perform by their names. The Bureau of Animal Industry frequently comes prominently before the notice of the public through the newspapers in matters relating to the diseases of animals and the inspection and quarantine of live stock suffering from such diseases. The shipment of spoiled or diseased meat is prohibited by the laws of the United States, and the inspection of meat and the food products from meat come under the jurisdiction of this bureau. The Bureau of Plant Industry is rather more of a scientific bureau. Its work is divided into twenty-nine groups, over each of which is placed a technically trained officer who studies plant life in all of its various forms in its relations to agriculture, and the Government is doing a most important work for the agricultural interests of the country in the studying of methods of exterminating the numerous enemies of plants, in devising better fertilizers, and in other ways assisting to improve the varied matters with which agriculture in so large a country as ours of necessity deals. Tobacco, cotton, fruit diseases, corn investigations, and all sorts of matters of a similar nature are among the duties of this bureau.

The Bureau of Chemistry, the Bureau of Soils, and the Bureau of Entomology all in a like manner conduct studies and experiments for the benefit of agricultural interests. A great many cases under the jurisdiction of the Department of Justice arise from violations of the Food and Drug Acts, by which the people of the

United States are protected from poisonous or fraudulent foods or drugs, and the Bureau of Chemistry is chiefly concerned with the analytical work and investigations necessary in connection with the enforcement of these laws. In the same way, the Bureau of Biological Survey has to do with carrying into effect the federal laws protecting game, and in recent years the Federal Government has assumed the protection of the game of the country in certain particulars.

There is also in this department the Bureau of Crop Estimates and the Office of Experiment Stations, which latter manages experiment stations in Alaska, Hawaii, Porto Rico, Guam, and throughout the various parts of the United States themselves. There is also the Office of Markets and Rural Organization which makes a special study of methods of packing and shipping agricultural products and the commercial side of agriculture. It also conducts investigations as to methods of rural credits and insurance, and even takes up social and educational activities in rural communities.

Unless one should desire to go very deeply into the methods of the Department of Agriculture as to the work of its various bureaus, it is only necessary to say that the department, in a most efficient and thoroughly up-to-date manner, investigates, experiments, and publishes every sort of thing that is of interest to agriculture in its broadest sense. If the San José scale attacks your fruit trees, you may write to the Department of Agriculture. If your neighbor has in an adjoining pasture to yours a tuberculous cow, you may

secure protection by advising the Department of Agriculture. If you desire to raise a special sort of turnip, again you may advise the Department of Agriculture. If it has not the seed for such a turnip as you wish, its experts will attempt to secure for you the sort of turnip you desire. The way in which the Department of Agriculture comes most closely in touch, however, with the non-farming element of the nation is that it yearly issues millions of bushels of seeds. A certain number of these seeds are allotted to each Congressman, and very many Congressmen annually flood their districts with seeds which they hope will bear a speedy fruit in the shape of votes at the next congressional election.

The fact that the thing most generally known in reference to the Department of Agriculture is the free distribution of seeds is a striking illustration of the prevailing ignorance of our people as to the enormous resources of the United States and the importance of the functions of the Department of Agriculture. There are about 6,000,000 farming families in the United States, and it is primarily their business to feed the rest of the country. What the United States eats and what it produces for others to eat every year is amazing. The annual production of the dairies in butter, milk, and cheese has a value of approximately \$600,000,000. The fruit orchards of the United States annually yield more than \$140,000,000, while the value of the annual production of vegetables alone is in excess of \$400,000,000. In these days of automobiles, unless one happens to keep a horse, hay and forage do not seem to

be very important matters, but the annual production of the United States of these two agricultural products exceeds in value \$800,000,000. The annual value of the poultry products alone aggregates half a billion dollars, which is about one half of the value of the annual cotton production.¹ While there has been in the past years an enormous increase in such products as wheat, fruits, dairy products, and poultry, there has been an absolute decrease in the annual production of such important food products as corn and meats, and the Department of Agriculture, in every possible way, is attempting to point out to the farmers of the United States the profits to be derived from increasing production in such matters and better methods of farm economics and placing their goods in the markets. The more one studies the far-reaching and important functions of the Department of Agriculture, the more one realizes the enormous value to the nation of the functions it performs. When we remember that in 1913 more than \$60,000,000 worth of hogs were destroyed by hog cholera, and that the cattle tick causes an annual loss from \$40,000,000 to \$100,000,000, we can grasp the enormous economic advantages of the endeavors of the Bureau of Animal Industry; but these are only part of the important functions of the department. The people of this nation are spending annually about \$200,000,000 for roads and the department is rendering most valuable assistance in the educational and construction work connected with these roads. The

¹ *Report of the Secretary of Agriculture for 1914*, pp. 6 and 12.

subject of rural credits is a most important one to the agricultural interests and therefore to the whole people.

The American farmers are, as a class, said to be more prosperous than any other farming class in the world, but the methods which have been applied to the great industries of the country are only now beginning to be applied to the rural life of the nation. The Department of Agriculture, through the Office of Markets and Rural Organization, and the Office of Farm Management, is doing a most important work in assisting the agricultural interests of the country to place themselves upon the highly organized and remunerative basis upon which our manufacturing industries have been for so long a time.

The rapid growth of the department since its organization has been phenomenal. In 1914, Congress authorized the Secretary to prepare a plan for reorganizing, redirecting, and systematizing the work of the department, and in his last report to the President, the Secretary of Agriculture made certain important recommendations along these lines. In recent years the problem of the congestion of cities and the desertion of rural communities has been presented to the American people in many forms. In the last fifteen years, the population has increased by 23,000,000, of which only about 6,000,000 appear as an increase in the strictly rural districts. The Department of Agriculture is using every possible effort for the improvement of rural life in all of its aspects, and is thus doing not only ex-

tremely important work for the general welfare of the nation, but work absolutely necessary to its integrity.

The two most recent executive departments of the Federal Government are the Department of Commerce and the Department of Labor. The Department of Commerce and Labor was created by Act of Congress in 1903, and the Department of Labor was carved from it in 1913. The Department of Commerce and Labor, before the Department of Labor was created, had in it the following bureaus: Corporations, Manufactures, Labor, Lighthouses, Census, Statistics, Fisheries, Navigation, Immigration and Naturalization, and Standards. It also had charge of the Coast and Geodetic Survey and Steamboat Inspection Service. Of the above-named bureaus, those of the Census, Lighthouses, Fisheries, Navigation, and Standards are all in the present Department of Commerce, as are also the Coast and Geodetic Survey and the Steamboat Inspection Service. There is no longer a Bureau of Manufactures, but in the Department of Commerce is a Bureau of Foreign and Domestic Commerce, which performs the duties which were formerly in the province of the Bureau of Manufactures with certain other duties which have been since added. Of the remaining bureaus of the old Department of Commerce and Labor, the old Bureau of Immigration and Naturalization now exists in the Department of Labor as the independent Bureaus of Immigration and of Naturalization and the old Bureau of Labor and the Bureau of

Statistics are merged into the present Bureau of Labor Statistics in the Department of Labor. There is a fourth bureau in that department called the Children's Bureau, and this one bureau is really the only division belonging to the two existing departments in addition to the divisions of the old Department of Commerce and Labor.

The Secretary of Commerce at the close of the year 1914 supervised the Bureau of the Census, with its highly technical organization, and the Bureau of Corporations which was almost an independent division of the Administration. This latter bureau, by the Act of Congress of September 26, 1914, providing for a Federal Trade Commission, was merged into this commission immediately upon its organization, the above act providing that the Bureau of Corporations should then cease to exist and that all of its functions should be exercised by the Federal Trade Commission. We will consider the work of the Bureau of Corporations when we examine the Federal Trade Commission. The remaining divisions of the department primarily concern commerce. The Coast and Geodetic Survey and the Steamboat Inspection Service are both important divisions. The Bureaus of Foreign and Domestic Commerce, of Navigation, and of Lighthouses relate specifically to commerce, while the Bureaus of Standards and of Fisheries relate less directly to the same subject. We will consider the census before taking up the divisions which relate primarily to the commercial functions of the department.

The Bureau of the Census formerly occupied a separate building from that occupied by the majority of the other bureaus of the department. It is now located in the main building of the department, and it is the urgent recommendation of the Secretary of Commerce that a suitable building be erected as soon as possible to accommodate all the divisions of the department. Such a movement is entirely in accord with the proper coördination of the work of the department, which, at the present time, is hampered by the scattered and semi-independent condition of many of its bureaus. Libraries were formerly maintained by each of the separate bureaus, but as a step toward the proper consolidation of the department, the library of the Bureau of the Census has recently been incorporated with the libraries of the other bureaus and the department now possesses one general library. The necessity for a proper census was recognized at the beginning of the Federal Government, and in Washington's first Administration a census was made. The Bureau of the Census collects and digests information, not only as to the number and character of the inhabitants of the nation, but conducts highly scientific researches into all manner of questions relating to their general interests. From time to time it publishes bulletins upon such subjects as "National and State Indebtedness and Funds and Investments," "Taxation and Revenue Systems of State and Local Governments," "National and State Revenues and Expenditures," "County and Municipal Indebtedness," "Central Electric Light and Power Stations and

Street and Electric Railroads," "Telephones and Telegraphs." It also prepares statistics in reference to occupations, agriculture, and various other national interests. Early in August, 1914, the bureau began the preparation of a special report relating to negroes in the United States, and it has recently issued a report on Indians, together with bulletins on the Chinese and Japanese. Under authority of an Act of Congress of April 30, 1912, the Bureau makes semiannual collections and publications of statistics as to tobacco, and it performs the same functions in reference to cotton and other staple products. In other words, the Bureau of the Census is the department of the Federal Executive for obtaining information on all subjects of interest to the general welfare of the nation and of putting this information into such form as will give it the greatest amount of practical value.

The Bureau of Foreign and Domestic Commerce is charged with fostering the more strictly commercial interests of American merchants and manufacturers and its duties bring it in close touch with the State Department. The work abroad performed by the department through this bureau is through the consular service and through commercial attachés and through commercial agents. The commercial agent is the "traveling man" of the department. He is charged with the investigation of a single matter or a group of allied interests, and in his study of them visits the various markets of the world and reports to the department upon opportunities there existing for American goods.

The force of commercial attachés works in conjunction with the permanent consular service for the promotion of American commerce. In order to perform its duties most beneficially to the business interests of the country, a branch office of the bureau was opened in New York, and the success of that office led to the institution of similar offices in Chicago, San Francisco, New Orleans, Boston, Atlanta, Seattle, and St. Louis, and new branch offices are being from time to time established. A special fund has been appropriated for promoting commerce in Central and South America, and by these various means the bureau works for the extension of American commerce.

The Secretary of Commerce, Mr. Redfield, in his Report for 1914,¹ very aptly says, "Practically every industry has its units, its special methods of measurement, and measuring instruments designed for every kind of need." Ancient laws of England still exist for the protection of the public from false weights and measures, and the false bottom in the peck measure to-day, as of yore, is still a source of apprehension to the housewife. The primary function of the Bureau of Standards is the stimulation of interest in honest weights and measures in daily trade, but the bureau performs much wider and more important functions. In all industries standardization has been and is one of the most important aims in modern efficiency. There is a federal law requiring the quantity label on package goods, which is enforced by the Treasury and Agri-

¹ Page 55.

cultural Departments, and in the carrying-out of this law the bureau coöperates, but it also performs highly important and scientific functions in such matters as the devising of standards for length, mass, capacity, heat, light, and electricity. It has evolved a system of measuring certain wave-lengths of light with the highest possible precision, and its testing laboratory performed about one hundred thousand tests in the past year for the Government Departments alone. Its work, however, is not confined to Federal Government needs. States and cities, public-service corporations and commissions, industrial laboratories and plants, commercial houses engaged in foreign trade, consulting engineers, educational institutions, and the general public all avail themselves of the agencies offered to the nation by the bureau.

In 1913 the fishing industry of Alaska gave employment to more than 21,700 persons, including over 4000 natives. The investment in fishing property exceeded \$37,000,000, of which \$34,953,000 represented the salmon industry. The catch of salmon aggregated 59,915,000 fish, from which there were prepared 3,739,000 cases of canned fish valued at \$13,531,000, and miscellaneous products valued at \$917,600. This is only a portion of the vast fishing industries of the United States, the income from which annually amounts to millions of dollars. All matters relating to these enormous sources of national wealth are under the direction and fostering care of the Bureau of Fisheries. Its fish-cultural activities are conducted in thirty-four

States, the Territory of Alaska, and the District of Columbia, at thirty-six permanent hatcheries and ninety-four auxiliary and egg-collecting stations, and its marine laboratories at Woods Hole, Massachusetts, and Beaufort, North Carolina, and the fresh-water laboratory on the Mississippi River at Fairport, Iowa, have been actively utilized for investigations, researches, and experiments of either immediate or prospective value to the fishing industries. The Alaskan fur-seal industry is also under its direct supervision. The enemies of the oyster and the destroyers of the seal alike receive the watchful care of this important bureau, which protects a very important source of food and revenue of the whole nation.

The Bureau of Lighthouses, the Coast and Geodetic Survey, the Bureau of Navigation, and the Steamboat Inspection Service are the remaining divisions of the department. On June 30, 1914, there were 5542 persons employed in the Lighthouse Service. The Coast and Geodetic Survey is the greatest service of its kind in the world. There are several times as many miles of coast in Alaska alone as in the entire United Kingdom of Great Britain and Ireland. The surveying and charting of the Philippines is by itself a far greater task than is imposed upon France on all her own marine borders in Europe. The surveying of the Hawaiian Islands, of Samoa, Guam, and Porto Rico is a greater task than is that of like work upon the European coast of Germany. During the fiscal year ending June 30, 1914, 318,094,347 passengers were transported on those ves-

sels which are required by law to report the number of passengers carried. The total number of accidents which resulted in the loss of life during this period was 232, and the number of lives lost was 582, including passengers and crew. The total documented merchant shipping of the United States on June 30, 1914, comprised 26,943 vessels of 7,928,688 gross tons, and the receipts from tonnage duties were \$1,310,759.03. Over all these commercial matters the department exercises more or less direction and supervision through the above-named bureaus. It is their duty to see that the navigation laws are enforced, that the dangers of the coast are known to the mariner, and that those who go down to the sea in ships may do so with the greatest possible safety. The United States is one of the three leading commercial nations, and it is not surprising to find that the cost of maintaining its Department of Commerce for the year ending June 30, 1914, amounted to about \$11,500,000.

A study of the functions of the Departments of Agriculture and of Commerce will do more than any other one thing to convince the citizens of this nation that the federal service requires the highest possible technical and scientific training for the proper performance of the vital matters relating to the general welfare conducted through these two great departments.

The Department of Labor is the third of the departments which we are considering in this chapter. As I have already pointed out, this department is another of the offshoots of the old Department of the Interior.

By the Act of June 27, 1884,¹ a Bureau of Labor was established in the Department of the Interior and its commissioner was required to collect information upon the subject of labor, its relation to capital, the hours of labor, and the earnings of laboring men and women, and their material, social, intellectual, and moral prosperity. We have already noted the transfer of this bureau to the old Department of Commerce and Labor, and have discussed the severance of the present divisions of the Department of Labor when that department was created in 1913. Its four chief divisions are the Bureaus of Immigration, of Naturalization, of Labor Statistics, and the Children's Bureau. While the work of all of these bureaus relates in a general way to labor, it also relates more specifically to the personnel of the inhabitants and citizens of the United States, and logically these bureaus might just as well be in the Department of the Interior or of Commerce. These departments, however, are already overburdened, and the creation of the Department of Labor is the most recent illustration of the natural expansion of the Federal Government. The policy of the department is expressed by Secretary Wilson. In his Report for the year ending June 30, 1914, the second annual report for the department, he says: "It was created in the interest of the welfare of all the wage-earners of the United States, whether organized or unorganized. Inasmuch, however, as it is ordinarily only through organization that the many in any class or of any interest can become

¹ 23 U.S. Stat. L. 60.

articulate with reference to their common needs and aspirations, the Department of Labor is usually under a necessity of turning to the labor organizations that exist and such as may come into existence for definite and trustworthy advice on the sentiments of the wage-earning classes regarding their common welfare. Freely as conferences with unorganized wage-earners are welcome, official intercourse with individuals as such has practical limits which organization alone can remove. Manifestly, then, the Department of Labor must invite the confidence and encourage the coöperation of responsible labor organizations and their accredited officers and committees if it is to subserve its prescribed purpose through an intelligent and effective administration of its authorized functions.”¹ The Secretary, under the organic law of the department, has power to act as mediator and to appoint commissioners of conciliation in labor disputes whenever in his judgment the interests of industrial peace may require it to be done. It is this power, rather than the routine work of the department bureaus, that gives reason for the creation of the department as a separate branch of the Federal Executive, and we shall later note that similar reasoning underlies the claim that there should be created a Department of Transportation, as an added arm of the President.

The Bureau of Immigration has charge of the administration of all immigration and Chinese exclusion laws. In the archives of the Bureau of Naturalization

¹ *Report for 1914*, p. 5.

are filed duplicates of all certificates of naturalization granted by state or federal courts since 1906, as well as the declarations of intention to become citizens, — and annually there are received approximately 400,000 naturalization papers, — and the bureau has charge of all naturalization cases. All manner of vital facts are collected and published by the Bureau of Labor Statistics, while the Children's Bureau devotes itself to that most necessary safeguard of the future of the nation — the welfare of the men and women who shall labor with arm and head for the continuance of the national life. Altogether, the Department of Labor is a most useful and necessary branch of the Federal Executive, and no department presents more important possibilities of national usefulness "in promoting the general welfare."

CHAPTER X

FUNCTIONS OF THE EXECUTIVE DEPARTMENTS IN SECURING CERTAIN OF "THE BLESSINGS OF LIBERTY." THE POST-OFFICE DEPARTMENT

BY the side of the magnificent Union Station in Washington is the new City Post-Office, a huge marble edifice belonging to the Post-Office Department which has just been erected. Carved upon the front of this building are a number of sentences descriptive of the work of the biggest business organization the United States at present conducts. I have elsewhere said that I anticipated as the next department to be created a Department of Transportation, but this new building is closely allied with a great transportation business which the United States already conducts. The inscriptions on the front of this building are strikingly descriptive of the work of the Post-Office Department: —

MESSENGER OF SYMPATHY AND LOVE
SERVANT OF PARTED FRIENDS
CONSOLER OF THE LONELY
BOND OF THE SCATTERED FAMILY
ENLARGER OF THE COMMON LIFE
CARRIER OF NEWS AND KNOWLEDGE
INSTRUMENT OF TRADE AND INDUSTRY
PROMOTER OF MUTUAL ACQUAINTANCE, OF
PEACE AND GOOD-WILL AMONG MEN AND
NATIONS.

Throughout the whole of the United States, in all cities and towns of any importance, are substantial and

in some cases large and very costly buildings belonging to the department, and in the smallest villages, usually in the "village store," are local branches of the Post-Office. On January 1, 1915, there were in all the various branches of the department over 300,000 people employed. Of this number 521 were first-class postmasters, having charge of the department's work in such great cities as New York, Chicago, Baltimore, and others. There were at the same time 2080 second-class postmasters, 6304 third-class postmasters, and 47,636 fourth-class postmasters in charge of cities, towns, and localities, making a total of 56,541 post-offices.

At the Post-Office Department Building, on Pennsylvania Avenue in Washington, are the executive offices of this vast system, by which money, letters, or fresh-laid eggs may be sent to and from all parts of the Union at extremely low prices. The Post-Office is the only department of the Government which conducts an enterprise which is not of necessity governmental in its functions, and its transactions are in themselves those of a huge and well-organized corporation. It is not only a carrier, but a bank, for by means of its money-order branch it conducts a domestic and foreign exchange business, and through the postal savings system, it affords savings-bank facilities to the smallest depositor in the most remote districts of the nation.

The Postmaster-General's duties are similar to those of the president of a great railroad, and the four Assistant Postmasters-General perform duties similar to those of the vice-presidents of such a railway system.

The department has its own law department, a part of the Department of Justice, and its own force of inspectors, who see that its work is properly done and that its officers are honest and efficient. Its uniformed and ununiformed employees are met with in every street and along every country road, and it enters into the daily life of nearly every citizen of the Union. Over 11,000,000,000 postage stamps of various sorts on newspaper wrappers, post-cards, stamped envelopes, and of different denominations are issued every year, and it has been computed that this means that more than a thousand stamps, irrespective of varying denominations, are used annually for each man, woman, and child in the United States. The annual receipts of the Chicago Post-Office are said to be larger than were those of the Federal Treasury from all sources at the beginning of the Civil War. The annual receipts of the Post-Office of New York City, which is the largest in the country, are more than \$23,000,000 a year. The extent of the dealings of the American people with this huge transportation system can best be realized by the estimate that each individual in the country pays about \$2.29 a year for postage. In 1837, the average *per-capita* expenditure a year for postage was about \$.32.

The Postmaster-General is, therefore, an often overworked business man, for upon him devolves the direction of the whole system. In the general Post-Office Building in Washington is a small private elevator leading to the Postmaster-General's offices which carries a constant stream of Senators, Representatives in

Congress, contractors of all sorts, and others from all parts of the country, and during the inauguration of the reforms instituted by Postmaster-General Hitchcock on many nights this little elevator was often in service until after midnight. The Postmaster-General is usually a man of broad business training, although, because of the numerous offices to be filled in his department, he is called upon to deal largely in what is popularly termed "politics." Such Postmasters-General as James A. Gary, of Maryland, who left a multitude of varying business interests to serve in President McKinley's Cabinet, and John Wanamaker, head of the great Wanamaker department stores, are prominent types of Postmasters-General who brought to the office wide business experience. Sir William Anson says the English Postmaster-General "is no more than the acting manager of a great business, with little discretionary power except in the exercise of the very considerable patronage of his office."¹ Our Postmaster-General is all of that and something more.

The work of the department is conducted through four divisions, and in addition certain matters are under the supervision of the director of the postal savings system, the chief post-office inspector, the purchasing agent, and the solicitor for the Post-Office Department. At the head of each of the four divisions is an Assistant Postmaster-General. The functions of the department can best be considered under these divisions. Roughly characterizing the duties of these

¹ *Law and Custom of the Constitution*, vol. II, p. 184.

executive officers, the First Assistant has charge of personnel; the Second Assistant, of transportation; the Third Assistant, of finance; and the Fourth Assistant, of miscellaneous matters.

The matters of personnel dealt with by the First Assistant include primarily the appointment of postmasters. The preparation of cases for appointment, supervision of postmasters' bonding and commissions, charges and complaints against them, regulation of their hours of business and leaves of absence, — all are under the charge of the First Assistant. Matters relating to their salaries, clerk hire, rent, light, fuel, canceling-machines, are also within his jurisdiction. Changing the names of existing post-offices, fixing sites for new post-offices, the establishing of postal stations, and such matters are part of the work of this division. The taxing details of the city delivery service include such matters as letter-carriers' pay, horse-hire, wagon-collection equipment, and general supervision of carriers. § The Post-Office Department has contracts with a vast network of railway and steamship corporations throughout the entire country, and in charge of all these matters of transportation is the Second Assistant Postmaster-General. The official analysis of his duties classifies them under the headings of railroad adjustments, miscellaneous transportation, foreign mails, railway mail service, and equipment. The General Post-Office was constituted the Post-Office Department by Act of Congress, approved June 8, 1872. The ever-increasing functions of the Post-Office Department can

be best appreciated by a consideration of the work done under the direction of the Second Assistant. With the recent assumption by the department, under the parcel post service, inaugurated through the efforts of Postmaster-General Hitchcock, of the business hitherto exclusively carried on by express companies, the Federal Government has extended its functions to matters logically within its duties, which have for a long time been exercised by European Governments. The extension of the Post-Office Department, however, is a result of the increased demands in population of the country and is directly no encroachment upon the rights of the States, since, from the beginning of the Union, the States have had nothing to do with the posts.

The parcel post service has been in operation for less than three years, but it is estimated that at the present time it handles more than 800,000,000 parcels annually. This service is not only domestic, but on the 9th of May, 1914, a parcel post service with Greece was inaugurated. Parcel post conventions with the Bahamas, Barbados, British Honduras, Ecuador, Jamaica, and other places have also been made, and negotiations are now in progress for similar conventions with Cuba, Argentina, China, Portugal, Russia, Spain, and other countries. The parcel post service has added to the department most extensive and important duties, and though, in the opinion of the department, it is, as yet, in some respects, only in the experimental stage, the increased volume of this business has presented many

difficult problems in connection with the transportation and handling of the mail.

The rural delivery service, by which letters, newspapers, money, and merchandise are delivered to often remote habitations in sparsely settled districts, is under the direction of the Fourth Assistant Postmaster-General. To me, the rural delivery service and the parcel post are typical of the increased influence of the Federal Executive, and indicate the manner in which the individual citizen of the whole Union is, through the Federal Government, brought into direct communication with the business life of the great cities. They are also typical of the general "personal unification" of the nation, since the establishment of rural delivery mail routes and the parcel post usually means a lessening of the business of local country post-offices. These post-offices have usually been located in the one and only store of the village. Upon the establishment of the rural delivery, many of its patrons cease their purchases at the local store which they had formerly of necessity visited to get their mail, and purchase and receive through the post-office service their household requirements from the huge mail order commercial houses that have arisen in the great cities. In the opinion of the present Postmaster-General, the rural delivery service not only improves the condition of farm life, but tends to check the movement of the rural population to the congested urban communities; but in his last report he calls to the attention of Congress the fact that this service entails an annual expense of

\$40,000,000, in excess of the revenues produced by such services.¹

The Treasury Department receives customs duties, internal revenue taxes, income taxes, and even war taxes, but all of this income is a return from taxation. The Post-Office Department is the only department which directly receives compensation for services rendered to the "consumer." It is the largest postal establishment in the world, and it deals with about one third of the aggregate postal business of all civilized nations. Until the administration of Postmaster-General Hitchcock, there existed an annual deficit in the years immediately prior to his appointment of some \$10,000,000 to \$18,000,000 a year. He, by far-reaching reforms, succeeded in eliminating this deficit and making the postal service not only self-supporting but a paying institution.² The report of the Postmaster-General for the year 1914 shows that for the year ending June 30, 1914, the income of the Post-Office Department was \$287,934,565.67, and its expenditures \$284,350,545.21, leaving an estimated surplus of \$3,569,687. In reference to this surplus Postmaster-General Burleson says: "In considering the financial condition of the postal service certain other factors must be taken into account; as, for example, rental at a fair value of federal buildings, fixtures, and equipment used wholly or in part for postal purposes, and the expenses incident to the conduct of the Post-Office Department and the

¹ *Report of the Postmaster-General for 1914.*

² Frederick J. Haskin, *The American Government*, p. 65.

office of the Auditor for the Post-Office Department, which are not now charged against the postal service. On the other hand, the department does not receive credit for the unrecompensed performance of functions, such as the free transportation of franked and penalty mail and the handling of second-class mail matter under a virtual subsidy of more than \$50,000,000 a year.”¹

“Franked” mail is that sent free by members of Congress, and “penalty” mail is that sent by the various departments and officers of the Government on official business. The latter derives its name from the imprint it bears, “Official Business. Penalty for private use \$300.” It costs to transmit second-class mail matter, as shown by the above Report, about \$50,000,000 a year more than the senders pay the Government, but the magazine and periodical publishers have so far successfully prevented any increase in the second-class postal rate. Among the most needed reforms in the postal service are the prevention of abuses of the franking privilege and rearrangement of the rates of second-class matter. In a case recently investigated by the Post-Office Department, the Government was defrauded out of \$57,600 of postage for pamphlets which were improperly transmitted under the franking privilege.

The Post-Office has long conducted a domestic exchange business by means of money orders, and the year ending June 30, 1914, marked the close of the first half-century of the operation of the postal money-order

¹ *Report of the Postmaster-General for 1914*, p. 5.

system. In the beginning, money orders could be obtained at 419 post-offices. At the present time they are available at 55,055 offices, and during the last fiscal year money orders were issued aggregating over \$667,000,000. The Post-Office also does an international money-order business and therefore conducts another function of an international banking house.

Another important phase of the banking function of the Post-Office Department is the postal savings system. In 1911, Postmaster-General Hitchcock established this system, the receipt of deposits having begun on January 3, 1911, in the post-offices in various States. The postal savings system has met with great popular approval, and the Report of the Postmaster-General for 1914 shows that on June 30, 1914, the number of depositors was nearly 390,000, while the amount on deposit to their credit was over \$43,000,000, showing an average increase in the principal of each depositor from \$102 to \$111 and a large increase in the number of depositors and depositories.

This system was inaugurated for the purpose of encouraging habits of saving among the mass of the people of the country, and apparently the object for which the system was instituted is being attained. At present the amount that may be deposited is restricted. No one depositor can place in the postal savings system more than \$100 a month, and he cannot have more than \$500 on deposit, but recommendations have been made by the Postmaster-General to Congress that these amounts be increased.

The United States, through the post-office, furnishes inexpensive, prompt, and most efficient communication between all parts of the country. Benefits of the postal service are a common benefit to all of the people, and the Government has provided strong safeguards against the abuse of the great privilege it thus affords. It is the duty of the Solicitor for the Post-Office ¹ and of the Department of Justice, through its district attorneys, to protect the people of the nation from such abuses. By the use of the postal service, the traditional "gold-brick" man of the great city may be brought into easy communication with the inhabitant of the smallest rural district, unversed in the ways of fraud and knavery of the great cities, and one of the most interesting class of cases that the Department of Justice is called upon to handle relates to the prevention of fraudulent use of the mails. I have already referred to these matters in describing the duties of the Department of Justice. Until the amendment of the Federal Penal Code of 1909, the mails were flooded with fraudulent stock-selling schemes of all kinds. Since that time a great number of persons, some of whom bore undeserved excellent reputations in the community, have gone to the penitentiary for defrauding widows and orphans through the mails, and the Department of Justice is constantly alert to protect the postal service, which, of all the branches of the Federal Execu-

¹ The Assistant Attorney-General for the Post-Office Department became the Solicitor for the Post-Office Department by Act of Congress, approved July 16, 1914.

tive, most nearly touches the daily life of the individual citizen of the Union. The extent of the fraudulent use of the mails can best be realized by the fact that the reports of the post-office inspectors for the year ending June 30, 1914, show that the promoters of fraudulent schemes carried out through using the mails obtained approximately \$68,000,000 from the public. The department considers that one of the best illustrations of the method in which money is obtained from ignorant persons through the mails has been in the exploiting of alleged remedies for various diseases advertised in a manner to frighten ignorant people into believing harmless aches and pains to be symptoms of serious diseases and causing them to pay exorbitant prices for worthless alleged remedies.

The Post-Office Department is a thoroughly up-to-date business institution. Nothing more clearly shows this than the fact that, while the army and navy are deficient in aerial defenses, during the past year the Post-Office Department has been conducting eight experimental aerial mail-service stations. For many years the Postmasters-General have cast covetous eyes toward the privately owned telegraph and telephone lines, and the future will undoubtedly see strong efforts made for government ownership of such public utilities.

CHAPTER XI \

THE CHIEF EXECUTIVES AND THE DEVELOPMENT OF THE EXECUTIVE DEPARTMENTS

IN the preceding chapters we have seen the creation of the Federal Executive, have traced its development, and noted and examined its organization and functions. Before concluding these studies by a discussion of the probability of the developments of the future, it will be of interest to see what part has been played in the past by various of the Presidents in relation to the expansion of the National Executive Administration. President Wilson has had twenty-six predecessors, every one of whom has, in a greater or less degree, exercised an influence on the Federal Executive. It is a difficult thing for the student and increasingly difficult for the general reader to carry in his mind the list of the twenty-seven Chief Executives. There is probably not one person out of every one hundred in the United States who could off-hand give the names of all twenty-seven. I have always recollected with considerable amusement a "memory expert" who came to the preparatory school I attended, with the avowed purpose of teaching us all how, easily, to remember any long list of names. He outlined a method by which we could remember in order all of the Presidents of the United States. I have never been able to recall his proposed method of association of the

various Presidents except as to Washington and Adams, but by reason of his instruction, I have never had any difficulty in remembering that Adams was the second President. He said that we must start with the premise that everybody knew that Washington was the first President. The first four letters of his name spell "Wash." "Even the most stupid schoolboy knew," said the "memory expert," "that it was impossible to wash without water." Water naturally suggested, even to the mind of average intelligence, a very usual means of conducting water, to wit, a hose. Hose, of course, would immediately recall to our minds the most common form of hose, that is to say, a "garden hose." At this point his face became illuminated with the approaching climax of his association of ideas. Garden hose reminded us of "garden"; "garden" reminded us of the "Garden of Eden" (it was assumed that we had been properly instructed in the Scriptures); "Garden of Eden" reminded us of Adam and Eve, and immediately the mind was able to draw out of its subconsciousness the fact that the second President was Adams. I have no easy method to suggest for a recollection of the twenty-seven Presidents of the United States, but it will be helpful to recall that they were Washington, Adams, Jefferson, Madison, Monroe, John Quincy Adams, Jackson, Van Buren, William Henry Harrison, Tyler, Polk, Taylor, Fillmore, Pierce, Buchanan, Lincoln, Johnson, Grant, Hayes, Garfield, Arthur, Cleveland, Benjamin Harrison, McKinley, the two living ex-Presidents, Mr. Roosevelt and Mr. Taft, and the present

Chief Executive, Mr. Wilson.¹ The ten executive departments were created or attained executive rank in the administrations of eight Presidents. The Departments of State, War, and the Treasury were all created in Washington's first Administration, between July 27 and September 2, 1789. The office of Attorney-General was created at the same time, but the Attorney-General did not become the head of the Department of Justice until the Administration of President Grant, when the Department of Justice was created June 22, 1870. The General Post-Office was also created in 1789 in Washington's first Administration, but the Postmaster-General was not admitted to the Cabinet as the head of an executive department coördinate with those of State, War, and the Treasury until the first Administration of President Jackson in 1829. The Department of the Navy was created April 30, 1798, during the Administration of President Adams, while the signing of the act providing for the Department of the Interior, on March 3, 1849, was one of the last acts President Polk performed as Chief Executive. The following day, March 4, 1849, President Taylor was inaugurated, and appointed the first Secretary of the Interior. The Department of Agriculture was created during President Cleveland's first term, February 9, 1889, while the Department of Commerce and Labor was instituted during President Roosevelt's Administration in 1903, and the Department of Labor in that of President Wilson in 1913. Although

¹ For a complete list of Presidents, Vice-Presidents, and the respective terms of each, see Appendix I.

these departments, with the exception of the original departments, were created during different Administrations, almost every President had made some recommendation to Congress concerning the necessity of the departments which were afterwards created.

When Washington delivered his inaugural address, April 30, 1789, he made no specific recommendation to Congress for the creation of any executive departments. When he sent his first annual message to Congress, the executive machinery for the Government had been provided for; but in his first inaugural address he said: "It will be more consistent with those circumstances, and far more congenial with the feelings which actuate me, to substitute, in place of a recommendation of particular measures, the tribute that is due to the talents, the rectitude, and the patriotism which adorn the characters selected to devise and adopt them." ¹ On June 8, 1789, however, he sent to the Secretary of Foreign Affairs, the Secretary of War, the Board of the Treasury, and the Postmaster-General who had served under the Articles of Confederation and who had remained in charge of the executive machinery, the following interesting communication: "Although in the present unsettled state of the executive departments under the Government of the Union I do not conceive it expedient to call upon you for information officially, yet I have supposed that some informal communications from the Office of Foreign Affairs might neither be improper nor unprofitable. Finding myself at this moment less occu-

¹ *Messages and Papers of the Presidents*, vol. I, p. 52.

pied with the duties of my office than I shall probably be at almost any time hereafter, I am desirous of employing myself in obtaining an acquaintance with the real situation of the several great departments at the period of my acceding to the administration of the General Government. For this purpose I wish to receive in writing such a clear account of the department at the head of which you have been for some years past as may be sufficient (without overburthening or confusing the mind, which has very many objects to claim its attention at the same instant), to impress me with the full, precise, and distinct general idea of the affairs of the United States so far as they are comprehended in or connected with that department. As I am now at leisure to inspect such papers and documents as may be necessary to be acted upon hereafter or as may be calculated to give me an insight into the business and duties of that department, I have thought fit to address this notification to you accordingly.”¹ The act providing for the Department of Foreign Affairs, which afterwards became the Department of State, was passed within six weeks of the time Washington sent the above communications, and the Departments of War and the Treasury were created almost immediately thereafter. Although we find no formal message to Congress from Washington on the subject of the executive departments, he was undoubtedly in constant communication with Hamilton, Madison, and those in Congress who were chiefly responsible for the legislation creating the departments.

¹ Sparks, *The Writings of Washington*, vol. x, pp. 11-12.

We know that Madison, who afterwards himself became President, offered the resolution in Congress to create the executive departments of Foreign Affairs, of the Treasury, and of War.¹ The Post-Office Department was created at about the same time, and the judiciary act which provided for the Attorney-General was formulated at the same period, and undoubtedly Washington participated actively in the preparation of these acts. Soon after his inauguration, Washington said: "The establishment of our new Government seemed to be the last great experiment for promoting human happiness by a reasonable compact in civil society. . . . There is scarcely any part of my conduct which may not hereafter be drawn into precedent."² Washington frequently referred to the United States as an infant empire, and he saw, before any one else, the marvelous future of the new Union. When he became President, there was no Government except a President and a Congress. No man was able to exercise more influence and in a greater measure to mould the character of the new experiment in government and no man could have done it more wisely than he. He was one of the most able judges of men the nation has ever known, and he drew about him a Cabinet which such an authority as Senator Lodge says, "in its aggregate ability never has been equaled in this country."³

The Department of the Navy was not created until

¹ Sydney Howard Gay, *Life of James Madison*, p. 143.

² Henry Cabot Lodge, *Life of George Washington*, vol. I, p. 7.

³ *Ibid.*, vol. II, p. 63.

nine years after the other departments. We have already seen how in the beginning the Secretary of War had charge of naval affairs. Foreign complications made a navy especially necessary under the Administration of President Adams. On May 16, 1797, in a message to a special session of Congress, President Adams said: "The naval establishment must occur to every man who considers the injuries committed on our commerce, the insults offered to our citizens, and the description of vessels by which these abuses have been practiced. . . . A naval power, next to the militia, is the natural defense of the United States. . . . Our seacoasts, from their great extent, are more easily annoyed and more easily defended by a naval force than any other. . . . But although the establishment of a permanent system of naval defense appears to be requisite, I am sensible it could not be formed so speedily and extensively as the present crisis demands." ¹ Adams had always taken especial interest in the navy. Coming as he did from New England, which at that time was the shipping center, the need of a sufficiently powerful navy had always been a favorite measure with him and one that he had urged constantly. During the Revolution he had taken a special interest in the navy and believed that the United States should be a great naval power. In January, 1798, the relations of the United States with France became critical. President Adams conferred with his Cabinet and the consensus of opinion was that the navy should be at once increased. On March 5, 1798, Adams

¹ *Messages and Papers of the Presidents*, vol. I, pp. 236-37.

advised Congress of the failure of the mission he had sent to France and advised continuance of immediate preparations against a very probable war. These efforts of President Adams resulted in the creation of the Department of the Navy on April 13, 1798.

Washington's first Cabinet contained in it men of diametrically opposed political principles who could not possibly have served together under any other man than Washington. Alexander Hamilton, one of the ablest, keenest, and most constructive statesmen of any age, enjoyed the complete confidence of his chief. By every tendency of his nature Hamilton favored a strong and powerful Federal Government, and the Federal Executive of to-day bears his stamp upon it still. Thomas Jefferson, the Secretary of State, however, was extremely fearful of the power of the Federal Government, and during his Administration as President no steps were taken toward the increase of the executive power. We have, however, a very interesting commentary from Jefferson concerning the manner in which Washington and Adams conducted the executive business. Jefferson disliked Adams, from whom he differed on almost every conceivable subject, and this must be borne in mind in reading his criticisms of President Adams's Administration. Jefferson was inaugurated March 4, 1801, and on November 6 of the same year, he issued a circular to the heads of the executive departments. It throws so much light upon the Cabinet of those early days that it is proper to quote a large part of it. Jefferson said to the members of his Cabinet: "Com-

ing all of us into executive office new and unfamiliar with the course of business previously practiced, it was not to be expected we should in the first outset adopt in every part a line of proceeding so perfect as to admit no amendment. The mode and degrees of communication particularly between the Presidents and heads of departments have not been practiced exactly on the same scale in all of them, yet it would certainly be more safe and satisfactory for ourselves as well as for the public that not only the best, but also an uniform course of proceeding as to manner and degree should be observed. Having been a member of the first Administration under General Washington, I can state with exactness what our course then was. Letters of business came addressed sometimes to the President, but most frequently to the heads of departments. If addressed to himself, he referred them to the proper department to be acted on. If to one of the Secretaries, the letter, if it required no answer, was communicated to the President simply for his information. If an answer was requisite, the Secretary of the department communicated the letter and his proposed answer to the President. Generally they were simply sent back after perusal which signified his approbation. Sometimes he returned them with an informal note suggesting an alteration or a query. If a doubt of any importance arose, he reserved it for conference. By this means he was always in accurate possession of all facts and proceedings in every part of the Union, and to whatsoever department they related: he formed a central point for the different

branches; preserved an unity of object and action among them; exercised that participation in the suggestion of affairs which his office made incumbent on him, and met himself the due responsibility for whatever was done. During Mr. Adams's Administration his long and habitual absences from the seat of government rendered this kind of communication impracticable, removed him from any share in the transaction of affairs and parcelled out the Government in fact among four independent heads drawing sometimes in opposite directions. That the former is preferable to the latter course cannot be doubted. . . . Whether any change of circumstances may render a change in this procedure necessary a little experience will show us. But I cannot withhold recommending to heads of departments that we should adopt this course for the present, leaving any necessary modifications of it to time and trial." ¹

We have already noted that President Madison as a member of Congress had taken an active part in the legislation which created the original departments. He was among the first to realize the necessity of additional departments and to recommend their creation. In his eighth annual message to Congress, December 3, 1816, he urged upon Congress "the expediency of a remodification of the judiciary establishment and of an additional department in the executive branch of the Government." Apparently by this recommendation, he placed before Congress the propriety of creating a De-

¹ Paul Leicester Ford, *Writings of Thomas Jefferson*, vol. VIII, pp. 99-101.

partment of Justice, for, he said, "the course of experience recommends, as another improvement in the executive establishment, that the provision for the station of Attorney-General, whose residence at the seat of government, official connections with it, and the management of the public business before the judiciary preclude an extensive participation in professional emoluments, be made more adequate to his services and his relinquishments, and that with a view to his reasonable accommodation and to a proper depository of his official opinions and proceedings, there be included in the provision the usual appurtenances to a public office." ¹

Madison was a Federalist and believed in a strong Central Government. At the same time that he made the above recommendations, he made the first formal recommendation of any President for what afterwards became the Department of the Interior. He said that "the extent and variety of executive business also accumulating with the progress of our country and its growing population call for an additional department, to be charged with duties now overburdening other departments and with such as have not been annexed to any department." ²

President Monroe, like Washington, Adams, and Madison, was a Federalist. In the Revolution he had enlisted as a private soldier, won promotion to the rank of captain of infantry, and distinguished himself as aide to Lord Sterling. Before his election as President,

¹ *Messages and Papers of the Presidents*, vol. I, pp. 577-78.

² *Ibid.*, vol. I, p. 577.

he had been a delegate to the Continental Congress, United States Senator from Virginia, Governor of Virginia, Envoy Extraordinary to France, and Secretary of State. He was thoroughly familiar with the necessity which led to the formation of the Union, and he strongly advocated strengthening and extending the power of the Federal Executive. In his first annual message, December 2, 1817, he called attention to the insufficiency of the accommodations for the several executive departments and urged that better facilities be provided the heads of the departments and the Attorney-General for the conduct of their business. He also urged the improvement and ornamentation of the National Capitol.¹ He was one of the first Presidents to suggest departmental supervision of the mining interests which are to-day taken care of by the Bureau of Mines in the Interior Department.² During his Administration the Post-Office Department, although not yet considered one of the executive departments equal in rank with the Department of State, had developed enormously, and in his seventh annual message to Congress, December 2, 1823, he congratulated Congress on the fact that there were 5240 post-offices in the Union and as many postmasters, and that the gross amount of postage sold from the 1st of July, 1822, to the 1st of July, 1823, was \$1,114,345.12;³ and again in his eighth annual message, December 2, 1824, he advised Congress that the revenue of the Post-Office Department "has received a considerable augmenta-

¹ *Messages and Papers of the Presidents*, vol. II, p. 19.

² *Ibid.*, vol. II, p. 190.

³ *Ibid.*, vol. II, p. 215.

tion in the past year," and that "the current receipts will exceed the expenditures"; also, "the transportation of the mail within the year has been much increased." ¹ In all of his messages to Congress he refers to the Post-Office Department in the same manner as he refers to the other executive departments. In one of his messages he shows his joy at the increase in power and strength of the Federal Union. "If," he said, "we compare the present condition of our Union with its actual state at the close of the Revolution, the history of the world furnishes no example of a progress in improvement in all the important circumstances which constitute the happiness of a nation which bears any resemblance to it." ²

John Quincy Adams was also a Federalist and he made numerous recommendations to Congress for the extension of the Federal Executive. In his first annual message, December 6, 1825, he called the attention of Congress to the recommendations of President Madison, "the citizen who," he said, "perhaps of all others throughout the Union, contributed most to the formation and establishment of our Constitution." President Madison, said President Adams, "urgently recommended the revision of the judiciary and the establishment of an additional executive department. The exigencies of the public service and its unavoidable deficiencies, as now in exercise, have added yearly cumulative weight to the considerations presented by him as persuasive to the measure, and in recommending it to

¹ *Messages and Papers of the Presidents*, vol. II, p. 258.

² *Ibid.*, vol. II, p. 219.

your deliberations, I am happy to have the influence of his high authority in aid of the undoubting convictions of my own experience." He also recommended the creation of a Department of the Interior. His father, as President, had been chiefly responsible for the Department of the Navy, and it was most natural, in considering the Federal Executive, that John Quincy Adams should have favored more executive departments. "The naval armaments," he said, "which at an early period forced themselves upon the necessities of the Union, soon led to the establishment of a Department of the Navy, but the Departments of Foreign Affairs and of the Interior, which, early after the formation of the Government, had been united in one, continue so united at this time, to the unquestionable detriment of the public service. The multiplication of our relations with the nations and governments of the Old World has kept pace with that of our population and commerce, while within the last ten years a new family of nations in our own hemisphere has arisen among the inhabitants of the earth, with whom our intercourse, commercial and political, would of itself furnish occupation to an active and industrious department." ¹ Although John Quincy Adams was a Federalist and favored a strong Central Government, and although he repeatedly called attention to the flourishing condition of the Post-Office Department, it remained for his successor, who had little use for Cabinets and Cabinet Ministers, to advance the Postmaster-General to Cabinet rank.

¹ *Messages and Papers of the Presidents*, vol. II, pp. 314-15.

Andrew Jackson thoroughly cleaned out the whole federal executive administration when he became President. He came into power, says Sumner, "as the standard-bearer of a new upheaval of Democracy and under a provision of new and fuller realization of the Jeffersonian Democratic - Republican principles."¹ His adherents objected to the term "Cabinet" and Jackson stripped the heads of the executive departments of the power and dignity they had gradually acquired and made of them no more than executive clerks. His Cabinet was not particularly strong; his Administration lacked unity and discipline; he relied for his advice chiefly upon a group of men who finally popularly came to be known as the "Kitchen Cabinet." I have already called attention, in one of the early chapters of this book, to the reasons which led Jackson to elevate his Postmaster-General, William T. Barry, to equal rank with the heads of the executive departments. Previous Presidents had already called attention to the enormously increased functions of the Post-Office Department. The Postmaster-General controlled many post-office appointments. Jackson did not consider the possession of a seat in the Cabinet as a privilege or honor of any very great consideration, but he did consider control of the appointments of postmasters for political purposes a most important matter. Postmaster-General John McLean, of Ohio, had occupied this position under the Administration of John Quincy Adams, without, however, being considered a member of the Cabinet. Jackson offered

¹ William Graham Sumner, *Life of Andrew Jackson*, p. 136.

to retain McLean as Postmaster-General with the added dignity of a Cabinet place, but McLean was not willing to conduct the Post-Office Department as Jackson desired, and therefore accepted a position on the bench of the Supreme Court, leaving to Postmaster-General Barry the newly acquired Cabinet honors and the dispensation of the political patronage. It is interesting to note that Barry, the Postmaster-General, was the only member of Jackson's Cabinet retained in his second Administration. Jackson was a Democrat, and as such was supposed to be opposed to any increase in the power of the Federal Executive; but throughout the whole history of the National Administration, strong Presidents without regard to party beliefs have usually favored strengthening the executive power. Whatever may have been Jackson's published beliefs, he recommended the creation of additional executive departments, and he raised an already existing department to equal rank with the original executive departments. In his first annual message, December 8, 1829, he referred with evident satisfaction to the increasing power of the Post-Office Department, recommended that the Attorney-General be placed on the same footing as the heads of the other departments, and showed that he favored the creation of a Home Department or Department of the Interior, although he did not find it advisable at that time to urge its creation upon a Democratic Congress. As to the Post-Office Department, President Jackson advised Congress that the report of the Postmaster-General showed a highly satisfactory adminis-

tration of that department, and added that the department "is to the body politic what the veins and arteries are to the natural — conveying rapidly and regularly to the remotest parts of the system correct information of the operations of the Government and bringing back to it the wishes and feelings of the people. Through its agency, we have secured to ourselves the full enjoyment of the blessings of a free press." ¹ As to the Attorney-General he said, "I would recommend, therefore, that the duties now assigned to the agent of the Treasury, so far as they relate to the superintendence and management of legal proceedings on the part of the United States, be transferred to the Attorney-General and that this officer be placed on the same footing in all respects as the heads of the other departments, receiving like compensation and having such subordinate officers provided for his department as may be requisite for the discharge of these additional duties." ² President Jackson again repeated his very wise recommendation as to the Attorney-General in his second annual message to Congress December 6, 1830; but it was not until the Administration of General Grant in 1870 that the Congress heeded the recommendation for the creation of the Department of Justice. Concerning the Home or Interior Department, President Jackson called the attention of Congress to the great increase of business in the Department of State. He recalled to Congress President Madison's recommendation for the creation of a

¹ *Messages and Papers of the Presidents*, vol. II, p. 460.

² *Ibid.*, vol. II, p. 453.

Department of the Interior, and stated that this recommendation had been repeated by both of President Madison's successors, and added, "my comparatively limited experience has satisfied me of its justness." He was unquestionably in favor of the creation of a Department of the Interior and so stated to Congress, but apparently he did not care to urge unduly upon them the establishing of this department. His reasons for not asking for the establishment of the department at that time are interesting. The remedy proposed for the over-taxed condition of the Department of State, said President Jackson, "was the establishment of a Home Department, a measure which does not appear to have met the views of Congress on account of its supposed tendency to increase gradually and imperceptibly the already too strong bias of the federal system towards the exercise of authority not delegated to it. I am not, therefore, disposed to revive the recommendation, but am not the less impressed with the importance of so organizing that department [State] that its Secretary may devote more of his time to our foreign relations. Clearly satisfied that the public good would be promoted by some suitable provision on the subject, I respectfully invite your attention to it."¹ Whatever may have been President Jackson's supposed attitude toward the expansion of the Federal Government, his recommendations to Congress, from the point of view of the Federalists, were entirely satisfactory, and as I have before pointed out, strong Presidents have contrib-

¹ *Messages and Papers of the Presidents*, vol. II, pp. 461-62.

uted to the extension of the Federal Executive, irrespective of party.

At the close of President Jackson's Administration, the Departments of State, War, the Treasury, and the Navy had been created. The Post-Office Department had been raised to equal rank with the other departments. The creation of the Department of the Interior and the Department of Justice had been strongly recommended. President Polk, in his first annual message, December 2, 1845, recommended a general reorganization of the several executive departments and a redistribution of their duties, which seemed to him to be incongruous. He also strongly recommended that the Attorney-General be placed on the same footing with the heads of the other executive departments.¹

In his second annual message, President Hayes called the attention of Congress, as Washington and many of his successors had already done, to the fact that the preponderance of the agricultural over any other interests in the United States entitled it to all the consideration claimed for it by President Washington, and in his third annual message, December 1, 1879, renewed his recommendation in favor of enlarging the facilities of the Department of Agriculture and asked that Congress place the department "upon a footing which will enable it to prosecute more effectively the objects for which it is established."² The department at that time was merely an independent division not

¹ *Messages and Papers of the Presidents*, vol. iv, pp. 414-15.

² *Ibid.*, vol. vii, pp. 505 and 579.

under the head of any executive department, and it was not until the Administration of President Cleveland that it was raised to executive rank. In his first annual message, December 8, 1885, and again in 1886, President Cleveland called the attention of Congress to the executive needs of agriculture.¹ February 9, 1889, the department was created as an executive department.

President Adams repeatedly called attention to the necessity of fostering the commerce of the nation.² President Grant in 1870 urged upon Congress attention to the depressed condition of American commerce,³ and President Arthur advised the legislative body that "the continuing decline of the merchant marine of the United States is to be greatly deplored,"⁴ and later he urged the appointment of a commission for the investigation and betterment of our commercial conditions.⁵ President Harrison in his first annual message, December 3, 1889, urged Congress to deal with the humiliating question of the inferiority of our merchant marine.⁶ The Fifty-seventh Congress finally created the Department of Commerce and Labor, upon the recommendation of President Roosevelt that "there should be created a Cabinet officer to be known as Secretary of Commerce and Industries as provided in the bill introduced at the last session of Congress. It should be his province to deal with commerce in its broadest

¹ *Messages and Papers of the Presidents*, vol. VIII, pp. 362 and 527. ² *Ibid.*, vol. I, pp. 251 and 256. ³ *Ibid.*, vol. VII, p. 106.

⁴ *Ibid.*, vol. VIII, p. 63.

⁵ *Ibid.*, vol. VIII, p. 244.

⁶ *Ibid.*, vol. IX, p. 56.

sense, including among many other things whatever concerns labor and all matters affecting the great business corporations and our merchant marine.”¹ The most recent department, the Department of Labor, has been discussed from time to time during various Administrations. Under the present Administration of President Wilson, the old Department of Commerce and Labor has been divided and the labor interests of the country, the importance of which have been recognized by almost every President since Washington, have their own special representative in the President’s Cabinet.

¹ *Addresses and Presidential Messages of President Roosevelt*, p. 298.

CHAPTER XII

PROBABLE DEVELOPMENTS IN THE FEDERAL EXECUTIVE

IN the first chapter of these studies, we took a general survey of the Federal Government. We then examined the creation of the executive departments and the Cabinet and followed through successive phases the development of the various departments and the Federal Executive as a whole. We have considered the status of the heads of the executive departments collectively as the Cabinet, and individually as constitutional officers of the Government in charge of various arms of the Executive. We have also considered the present organization of the departments and have attempted to give accounts of their functions sufficiently particular to convey a fairly specific idea of the multiplex and important matters with which the Federal Executive deals. In the preceding chapter, enough has been said concerning the men who have headed the Federal Executive since the Union was instituted to give some idea of the part various Presidents have played in the development of the Federal Executive. In this concluding chapter, we shall try to forecast some of the developments which may take place in it. There are three elements to be taken into consideration in such an examination — the President as Chief Executive, the heads of the executive departments collectively as the Cabinet, and the executive departments

themselves as integral parts of the Federal Executive. The powers of the President and the status of the Cabinet, we have considered from time to time, and there is small ground for any belief that there will, in the near future, occur any essential changes in the powers and relations of the President or the members of his Cabinet. The President to-day, as the Chief Executive, occupies the same place in the Federal Government as he did when Washington was first inaugurated. The Chief Executive of a nation with over 101,208,315 population necessarily has greater power and a much wider and more diversified power than the Chief Magistrate of a newly formed Union with a population of about 4,000,000. When the Constitution was put into effect the federal idea was very weak. We have seen how jealous were the representatives of the individual States of the new central power. To-day the national concept is a vital part of the consciousness of the American people, and especially since the Spanish-American War by the policies of both great national political parties the Federal Government has grown enormously in power. The federalization of the National Guard of the various States, the assumption of an ever-increasing control by the Central Government over interstate business, the creation of the Department of Labor, are only three of the indications of the present tendency to add to the functions of the Federal Government. The old cry of "States' rights" may occasionally be raised as a political slogan, but the ancient jealousy of the Union no longer plays an important part in the promulgation

of political policies. The President of the United States will probably become in the future a more powerful individual as the Federal Government acquires a more commanding place in the national life, but the President himself will continue to occupy the position he has occupied since the beginning, and his influence, as in the past, will depend largely on the strength or weakness of his own personality.

We have noted that the Cabinet in the beginning was not as such provided for by the organic law of the Union. It remains to-day an unofficial body of presidential advisers, whose only legal status arises from their being heads of executive departments and as such constitutional officers of the United States. There is more formality to-day than formerly in the meetings of the Cabinet, but the actions of the Cabinet still remain merely advisory to the President. There seems to be no reason to believe that any change will occur in this particular. We have discussed the possibility of seats being provided in Congress for the members of the Cabinet, but this question has never been seriously agitated, nor is there any reason to believe that it will become a vital question in the near future. The influence upon the Administration of the individual members of the Cabinet, as in the past, will depend upon their personal relation to the President and their political and personal strength. In Washington's first Cabinet existed what would now be an anomalous condition. Jefferson, while a member of Washington's Cabinet, was actively opposed to the political theories

of the President, and while a member of the Cabinet openly and without any marked disapprobation of Washington formed the party whose underlying principles were opposed to those of the Federalists with whom the first President was in entire accord. At the present time no such condition could exist for any length of time, for to-day it is expected that the members of the Federal Executive shall be in accord with their chief and with the principles of the party whom he represents. There are at present ten executive departments and ten members of the Cabinet. Undoubtedly there will, in the future, be additional departments and additional members of the Cabinet, but it is to be hoped that the increase in the number of these executive officers will not be so great as to deprive the Cabinet of its effectiveness as a small, coherent advisory council. The greatest probable development in the Federal Executive is to be looked for in the creation of further departments. The greatest need in the Federal Executive is a reorganization and coördination of the functions of these various departments.

At the present time the Interstate Commerce Commission and the new Federal Trade Commission are both in the position of the Department of Labor before it came under the jurisdiction of the Department of Commerce and Labor prior to its erection into an independent department, and it is probable that the duties performed by these two bodies will in time be brought under the direct supervision of an executive department. The Bureau of Education in the Interior

Department and the Civil-Service Commission may some day become the nucleus for a new executive Department of Education. There was once a Department of Railroads in the Interior Department, but this department ceased to exist when the Government's participation in the construction of the great transcontinental lines came to an end. The question of government control of railroads is one of the important questions to-day open for consideration. The possible acquisition and management by the Government of the telephone and telegraph lines of the country has also received considerable attention in recent years. The Department of Commerce, as now constituted, deals chiefly with foreign commerce, and it would seem to be likely that we may have, in the future, one or more departments dealing with railroads, telegraphs, telephones, and domestic interstate trade. Let us consider first the possibility of an executive Department of Education.

I have already pointed out that among the Cabinet officers of the future will probably be a Secretary of Education. At present there is in the Department of the Interior the Bureau of Education. By the Act of March 2, 1866,¹ a Department of Education was established for the purpose of collecting and diffusing such information relative to schools as would aid the people of the United States in the establishment and maintenance of efficient school systems and otherwise promote the cause of education throughout the country. This department was not intended to be an executive

¹ 14 U.S. Stat. L. 434.

department of equal rank with those already created, but it was not attached to any existing executive department nor was its head under the direct authority of any Cabinet officer. A Commissioner of Education as head of this department was authorized, just as later a Commissioner of Labor was created. The latter has become head of the executive Department of Labor, but the Commissioner of Education has not yet become Secretary of Education. By the Act of July 20, 1868,¹ the name of the Department of Education was changed to the Office of Education and was placed under the direction of the Secretary of the Interior. One of the greatest needs at the present time in the federal service is the proper training of efficient civil servants. The Civil-Service Commission stands for efficiency in the civil service of the Government based upon merit rather than upon political affiliations, and the efficient conduct of the Federal Executive must depend upon a realization of the fact that certain offices require expert service and technical training. It would seem not improper that the general educational interests of the nation now fostered by the Bureau of Education should be combined with those activities of the Government which have in view proper training and specialized efficiency in the service of the Government itself. An executive department having direction both of general education and special government service education would assume control of various educational functions performed at the present time by a number of the de-

¹ 15 U.S. Stat. L. 106.

partments and might be a very valuable addition to the Federal Executive. In regard to the possibility and advisability of an executive Department of Education, it will not be improper for me to quote the opinion of the present Commissioner of Education, the Honorable Philander P. Claxton, whose advice upon this subject I have asked. Commissioner Claxton states that the Bureau of Education attempts definitely the following things: (1) To be a clearing-house for accurate information in regard to all phases and problems of education in this country and throughout the world. (2) To be a clearing-house for well-matured opinion; that is, the consensus of the best opinion on any particular problem of education, whether administrative, financial, or pedagogic. (3) To be a source of sound and reliable advice on any particular subject connected with education in any part of the United States. (4) To assist school officials and citizens in bringing about better educational conditions in any State or section of the country, and in bringing about better opportunities for education for all the people; that is, to conduct its own campaigns for educational betterment and to assist in campaigns conducted by States and local communities or by associations interested in any particular form of education. (5) In addition to the above, it is trying to find its way toward working out a definite body of scientific knowledge in regard to education in general and methods of teaching in particular, to do something similar to what has been done by the Department of Agriculture, working through the agricul-

tural experiment stations, in the several States for the last twenty-five years. As to the advisability of a separate executive Department of Education, Mr. Claxton feels that "just whether these things can be better done through a separate department with a Cabinet member at its head, or through a well-supported bureau in the Department of the Interior, I am unable to say. The separate department would have somewhat more independence and probably more influence than a bureau. But, on the other hand, a department with a Cabinet position would necessarily be more closely allied with changing partisan politics. No doubt there will some time be a Department of Education. This will, I think, come as a result of a large increase in the support and extension of the functions of the present bureau."

The most apparent tendency in the development of the departments has been the outgrowing of the ancient restrictions in the same normal manner as the small boy outgrows his knickerbockers: the Treasury Department has grown bigger as the national purse enlarged; the Navy Department has grown bigger as the size of the Union increased, and so it is with most of the executive departments. An interesting feature, however, in the history of the development of the executive departments is that to which I have already called attention in the account of the development of those departments. The same tendencies exist to-day that have always existed for unimportant functions of certain departments to become so insistently prominent that they cease to be subordinate matters of one depart-

ment and are recognized by the creation of an additional independent branch of the executive power. It has already been suggested that the Interstate Commerce Commission may naturally develop into a department of railroads, whether or not the Federal Government supervises railroads or ultimately owns them. The Report of the Postmaster-General for the year 1914 renews a suggestion which may mean eventually a new department which will conduct the national telegraphs and telephones. The Postmaster-General recommends a consideration by Congress of extending the government monopoly of the postal service to the transmission of all forms of intelligence, such as the telegraph and the telephone systems of the country. While this suggestion is made as an increase of the functions of the Post-Office Department, should the Government ever so extend its functions these vast new additions of a purely business nature would probably be handled by a new executive department. The heads of the executive departments speak only, theoretically, with the voice of the Chief Executive, and therefore we are permitted to consider the recommendations of the Postmaster-General as being the recommendations of the President. The President, under our present form of party government, is the recognized mouthpiece of his party, and we may, therefore, in considering the tendencies of the development of the executive departments, consider the recommendations of a Postmaster-General as a possible plank in some future party platform. It is, therefore, of interest for us to note

what the present Postmaster-General considers to be the opinion of all the Postmasters-General of the United States on the subject of the extension of the government monopoly for the transmission of intelligence to include the telegraphs and telephones. "It is an interesting fact," Postmaster-General Burleson reports to Congress, "that, whereas policies of Government have been advocated, and some adopted, the constitutionality of which have been seriously questioned, the principle of government ownership and control of the telegraph and telephone finds its greatest strength in the Constitution. This opinion has been shared by practically all Postmasters-General of the United States, who have held that the welfare and happiness of the nation depend upon the fullest utilization of these agencies by the people, which can only be accomplished through government ownership." ¹ The English Postmaster-General has been given exclusive control of the telegraph by provisions which have been held to include the telephone also, and the English Government has recently decided to take over the management of the telephones. ²

The Interstate Commerce Commission which to-day has charge of railroad affairs is not an executive department. It is, however, the only governmental agency which, at the present time, concerns itself with the railroads of the United States. Should, however, a Department of Railroads be eventually created, it will

¹ *Report of the Postmaster-General, 1914*, p. 13.

² Lowell, *The Government of England*, vol. I, p. 114.

not be entirely without the sanction of precedent. The office of the Auditor of Railroad Accounts was created by Act of June 19, 1878,¹ which provided that the duties of the auditor, under direction of the Secretary of the Interior, should be to devise a system of reports of government-aided railroads west of the Missouri River, to see that the laws relating to certain questions were enforced, to examine the company's accounts for government transportation, etc. By the Act of March 3, 1881, the title of Auditor was changed to Commissioner of Railroads. The Act of March 3, 1893,² abolished the office of Commissioner of Railroads and provided that the records and files of this office should be transferred to the Secretary of the Interior. The Act of 1878 was passed in the days when the United States was participating in the building of the transcontinental railroads, and we have already seen that the Secretary of the Interior exercised an important control over such roads during the period of their construction. Apparently, the Commissioner of Railroads and the Secretary of the Interior's control of railroads existed until 1889, when the Interstate Commerce Commission became independent. By the Act of February 4, 1887,³ entitled "An Act to regulate commerce," by which the granting of rebates was prohibited and various other restrictions were imposed upon railroads, the Interstate Commerce Commission was created, to be appointed by the President. This act required the

¹ 20 U.S. Stat. L. 169.

² 32 U.S. Stat. L. 1119.

³ 24 U.S. Stat. L. 383.

Commission to submit an annual report to the Secretary of the Interior, and also authorized him to pass upon the accounts of the Commission and provide quarters for the Commission. He also was required to approve the appointment of the employees of the Commission. The Secretary of the Interior seems to have found these duties irksome, for in his annual report for the fiscal year ending June 30, 1887, he recommended that the supervisory powers conferred upon him with respect to the Interstate Commerce Commission be revoked, and by the Act of March 2, 1889,¹ the Interstate Commerce Act was amended so as to require the Commission to submit its report to Congress direct, and to withdraw from the Secretary the power to approve appointments, provide quarters, and pass upon accounts of the Commission.

When, in 1903, the Department of Commerce and Labor was created, the status of the Interstate Commerce Commission was fully considered, and whether or not it should be brought under the jurisdiction of an executive department was discussed at length in the Senate. The debates on this subject, participated in by the ablest members of the Senate, show the existence of a strong feeling that all of the executive agencies should be under the direct supervision of a member of the Cabinet. In reference to this matter, Senator Spooner said: "It is a little odd to have independent and unassimilated bureaus in the Government. *Prima facie* there is propriety in almost every case in having

¹ 25 U.S. Stat. L. 861.

these bureaus, whatever they may be, or these sub-departments, whatever they may deal with, in some executive department, presided over by a Cabinet officer, who twice a week or every day visits the Chief Executive, who is responsible for the general conduct of the Administration. I agree with the Senator from Virginia [Mr. Martin] in all he said, and especially I agree with him that there are peculiar reasons why the Interstate Commerce Commission should not be transferred to a department. The Interstate Commerce Commissioners are charged with the administration of an Act of Congress. It is part of their function to investigate with a view to enforcing the requirements of the Interstate Commerce Law, but a part, and a very important part, of their functions are *quasi-judicial*." At this stage of the debate, Senator Hale, of Maine, remarked, "Is not that true about any bureau of importance in any department of the Government?" to which Senator Spooner replied, "I do not think it is true." Senator Hale then replied, "The Indian Bureau in the Interior Department is engaged in administering the law. There is not a day in the great Land Office of the Interior Department when questions of law do not come up which involve hundreds of thousands and millions of dollars. Indeed, I have heard it said that the decisions of the Commissioner of the General Land Office yearly involve more value in property than those of any court which exists in the United States. The Interstate Commerce Commission was authorized to do nothing more than that. It is a projected body into

the administration of the Government. They have no force so far as promulgating decisions which are recognized as law. Their duties are purely administrative, purely with regard to seeing that the different laws in reference to railroad transportation and interstate commerce are carried out. Everything about it could be done by a well-developed and well-conducted bureau in a department as well as it is done now." Senator Spooner replied to this that "the Interstate Commerce Commissioners are rather *sui generis*. Of course they are 'projected into the administration,' just as every other bureau that has ever been created was 'projected into the administration.'" Senator Hoar, of Massachusetts, expressed the opinion "that the Interstate Commerce Commission is practically a judicial body."¹ Congress excluded the Interstate Commerce Commission from the Department of Commerce and Labor because of the judicial functions of the Commission. As I have pointed out, the Department of Justice exercises a large measure of control over the administration of the federal courts, and the work of the Department of Justice through the Attorney-General's office and the offices of various district attorneys is more than *quasi*-judicial. The Attorney-General in the early days of the Federal Executive was outside the executive departments, and it was not until 1870 that the Department of Justice was created. It would seem that cogent reasons exist for the placing of the Inter-

¹ *Organization and Law of the Department of Commerce and Labor* (1904), pp. 514-15.

state Commerce Commission under the direct supervision of a Cabinet officer, and the purely judicial functions of the Commission would seem to offer no valid bar to such supervision of the Commission by an executive department.

As early as 1864, bills were introduced in Congress for the creation of an executive department similar to the Department of Commerce and Labor. February 8, 1864, in the first session of the Thirty-eighth Congress, a bill was introduced to create and organize a Department of Industry, and in 1874, in the Forty-third Congress, a bill was introduced to create a Department of Commerce. The organization of such an executive department was repeatedly considered by Congress until 1903, when the Department of Commerce and Labor was finally erected. The original bill which resulted in the creation of the Department of Commerce and Labor provided for a department to be called the Department of Commerce. It provided that the existing Department of Labor, which was not at that time an executive department and which was independent of any executive department, should be placed under the jurisdiction of the Secretary of Commerce. In the debates in Congress it was noted that the Department of Labor was technically really an independent bureau, and that it occupied the same position as the Department of Agriculture when it was presided over by a Commissioner of Agriculture. The claims of American labor were, however, at that time recognized by adding to the name of the department, which finally emerged from

Congress as the Department of Commerce and Labor. We have already seen that in 1913, the original independent non-executive Department of Labor became a full-fledged executive department.

The original bill for the creation of the Department of Commerce contained a reference to the Commissioner of Railroads. It was pointed out that this office had been abolished by an Act of Congress which had taken effect on the previous 30th of June, and the original bill providing for the transfer of the office of Commissioner of Railroads to the proposed new department was thereupon amended so as to strike out all reference to the Commissioner of Railroads. In the debate on this subject attention was called to the fact that this office had become obsolete, "now that the entanglements of the Government with the Pacific Railroads had been eliminated." In 1874, in the Forty-third Congress, a bill was introduced ¹ to establish a Bureau of Transportation to regulate the management of Interstate Commerce. The old office of the Commissioner of Railroads has ceased to exist. The Interstate Commerce Commission to-day is the only arm of the Government definitely dealing with the regulation of railroads. The Post-Office Department, by reason of the enormous amount of matter it transports by rail, has important dealings with the railroads, and from time to time new questions concerning railroad regulation in its relation to the Federal Government arise for consideration.

The commercial interests of the United States clam-

¹ H.R. 1094.

ored for executive representation for many years before the Department of Commerce was created. The labor interests of the United States sought executive recognition for many years before the Department of Labor was created, and to-day the railroads themselves are asking for the addition to the executive departments of a Department of Transportation. In reference to this I cannot do better than to quote from an address made by Mr. Howard Elliott, Chairman of the Board of Directors and President of the New York, New Haven, and Hartford Railway Company, delivered April 8, 1915, at Norwich, Connecticut, in which he said: "To-day the Government recognizes some of the great commercial activities of its population by departments and Cabinet officers, such as the Secretary of the Treasury, Secretary of Agriculture, Secretary of Commerce, and Secretary of Labor. The transportation business of the United States is next to agriculture in importance, in volume, and in its relation to the welfare of the whole country, and it should have a defender in the councils of the Cabinet. I believe it would be well to have a Department of Transportation, with a Secretary of Transportation at the head of it, who would be a member of the Cabinet. Such a man would of necessity have to champion somewhat the rights and privileges of the transportation business, just as the Secretaries of the Treasury, Commerce, and Labor speak for their particular subjects. Such an officer would have a wholesome balancing effect between the demands of the public and of the regulatory organizations on one side, and

any errors of policy and management on the part of the owners of the property on the other side."

The Act of Congress of September 26, 1914, providing for a Federal Trade Commission, transferred to this Commission the work formerly done by the Bureau of Corporations of the Department of Commerce. The creation of this Bureau of Corporations was considered one of the most important matters in connection with the Department of Commerce and Labor. President Roosevelt, in his message to the two houses of Congress at the beginning of the second session of the Fifty-eighth Congress, said: "The Congress has created the Department of Commerce and Labor including the Bureau of Corporations with, for the first time, authority to secure proper publicity of such proceedings of the great corporations as the public has the right to know. . . . The preliminary work of the Bureau of Corporations in the Department has shown the wisdom of its creation. Publicity in corporate affairs will tend to do away with ignorance and will afford facts upon which intelligent action may be taken."¹ By the merger of the Bureau of Corporations in the Federal Trade Commission, the work in reference to "big business," which was intended to be done by the Department of Commerce and Labor, has been placed under the jurisdiction of a Commission which is not under the supervision of any one of the members of the Cabinet. The old Bureau of Corporations investigated the

¹ *Addresses and Presidential Messages of President Roosevelt*, pp. 380-81.

legal and economic problems relating to proposed legislation concerning interstate trade. It also investigated the efficiency of trusts from the standpoint of business profits and from other standpoints of social welfare. The Federal Trade Commission Act ¹ was approved by the President September 26, 1914, and is now being put into force. It provides for a Federal Trade Commission consisting of five commissioners, each of whom, when the organization is complete, will be appointed for a term of seven years and receive a salary of ten thousand dollars. The act provides that the Commission is to choose from its own members its chairman, and that the commissioners shall not engage in any other business, vocation, or employment. Upon the organization of the Commission and the election of its chairman, the Bureau of Corporations and the Office of Commissioner and Deputy Commissioner of Corporations, formerly under the jurisdiction of the Secretary of Commerce, cease to exist and all pending investigations and proceedings of the Bureau of Corporations are to be continued by the Commission. The act is very broad in its scope. It declares that unfair methods of competition in commerce are unlawful, and that the Commission is empowered and directed to prevent persons, partnerships, or corporations, except banks and common carriers subject to the acts to regulate commerce, from using unfair methods of competition in commerce. The Commission is empowered to gather and compile information concerning, and to

¹ U.S. Stat. L., 1913-14, p. 717.

investigate from time to time, the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the act to regulate commerce, and its relation to other corporations and individuals, associations, and partnerships. It also has the power to require from corporations engaged in commerce, excepting banks and common carriers subject to the act to regulate commerce, to file with the Commission annual or special reports, or answer in writing specific questions as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals. Whenever a final decree has been entered against any corporation under the Anti-Trust Acts, the Federal Trade Commission is empowered to ascertain whether such decree is being carried out. It may institute such an investigation upon its own initiative or upon application of the Attorney-General. The President or either house of Congress may direct the Commission to investigate and report the facts relating to any alleged violations of the Anti-Trust Acts. The Commission may also, upon the application of the Attorney-General, investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the Anti-Trust Acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law. The Commission may also make annual and special reports to Congress containing recommendations for additional

legislation, and it may investigate any combinations or practice of manufacturers, merchants, or traders that may affect the foreign trade of the United States. There is also a very interesting provision in the act that in any suit in equity brought by or under the direction of the Attorney-General, as provided in the Anti-Trust Acts, the court may refer the testimony in the case to the Federal Trade Commission, which is empowered to act as a master in chancery to ascertain and report to the court an appropriate form of decree to be passed in the pending suit. The Federal Trade Commission, as I have pointed out, is not subject to the jurisdiction of any existing executive department, but the several departments and bureaus of the Government, when directed by the President, are required to furnish the Commission any records, papers, and information in their possession relating to any corporation subject to any of the provisions of the act, and, if requested, shall detail from time to time such officials and employees to assist the Commission as the President may direct. The Commission is endowed with power to compel the attendance of witnesses and to enforce its findings through the courts of the United States. Penalties are provided for failure by any corporation to file the reports required by the Commission. From this summary of the functions of the Commission, it will be seen that it possesses far-reaching and very important powers. What it can do and what it may not attempt will doubtless be the subject of much litigation in the courts of the United States. The

problem of the relation of the Federal Government to the large business interests of the country is one of the most important questions at present unsolved. For the purposes of this consideration, the Federal Trade Commission is interesting chiefly because it adds very great additional powers to the Federal Executive, and because, like the Interstate Commerce Commission, it is an arm of the Federal Executive which at the present time is not under the direct supervision of any of the heads of the ten existing executive departments.

A Department of Education, a Department of Transportation, and a Department of Interstate Trade are possibilities for future executive departments. It may be that three independent departments may come within the next few years; it may be that the regulation of transportation, regulation of interstate business, and the regulation of telephone and telegraph facilities may all be combined in one executive department, which might well bear the name of the Department of Domestic Commerce. I do not think it advisable, however, that the number of members of the Cabinet be greatly increased, and it may be that a general reorganization of all the executive departments will take place in order to provide for those matters which are now outside of the supervision of the members of the Cabinet. In any such reorganization of the federal executive departments, it will be well to bear in mind the criticism of Senator Hale, of Maine, at the time when the Department of Commerce and Labor was created. "The bill," said Senator Hale, "is called a bill to establish the

Department of Commerce, and the subject-matters that are in it have not so much relation to commerce as light has to darkness. Why should the Census Bureau — a bureau made of internal consequence, internal business, in a great department, dealing with the internal affairs of the country, the population of the country — why should that be put into the Department of Commerce?"¹ When the Interior Department was organized, it took from the existing departments most of the miscellaneous matters which did not properly belong to the existing departments. When the Department of Commerce and Labor was organized in 1903, again from the existing departments were taken many of the unrelated matters which had been imposed upon those departments. When the time comes for the creation of a new department in the Federal Executive, it is to be hoped that a logical rearrangement of the functions of the various departments will be made. The possibilities for development of the United States are boundless, and as I said at the beginning of these studies, there is nothing which better indicates the development of this nation than the amazing increase in the power and the functions of the Federal Executive. In the future it is to be expected that the functions of the Federal Executive will become broader and more far-reaching as the natural development of the nation continues.

¹ *Organization and Law of the Department of Commerce and Labor* (1904), p. 438.



APPENDIX

A

LIST OF PRESIDENTS AND VICE-PRESIDENTS AND THE LENGTH OF SERVICE RENDERED

<i>Presidents</i>	<i>Vice-Presidents</i>	<i>Service</i>
George Washington	John Adams	Apr. 30, 1789-Mar. 3, 1797
John Adams	Thomas Jefferson	Mar. 4, 1797-Mar. 3, 1801
Thomas Jefferson	Aaron Burr	Mar. 4, 1801-Mar. 3, 1805
Thomas Jefferson	George Clinton	Mar. 4, 1805-Mar. 3, 1809
James Madison	George Clinton	Mar. 4, 1809-Mar. 3, 1813
	(died Apr. 20, 1812)	
James Madison	Elbridge Gerry	Mar. 4, 1813-Mar. 3, 1817
	(died Nov. 23, 1814)	
James Monroe	Daniel D. Tompkins	Mar. 4, 1817-Mar. 3, 1825
John Quincy Adams	John C. Calhoun	Mar. 4, 1825-Mar. 3, 1829
Andrew Jackson	John C. Calhoun (resigned Dec. 28, to become U.S. Senator)	Mar. 4, 1829-Mar. 3, 1833
Andrew Jackson	Martin Van Buren	Mar. 4, 1833-Mar. 3, 1837
Martin Van Buren	Richard M. Johnson	Mar. 4, 1837-Mar. 3, 1841
William Henry Har- rison	John Tyler	Mar. 4, 1841-Apr. 4, 1841
John Tyler		Apr. 6, 1841-Mar. 3, 1845
James K. Polk	George M. Dallas	Mar. 4, 1845-Mar. 3, 1849
Zachary Taylor	Millard Fillmore	Mar. 5, 1849-July 9, 1850
Millard Fillmore		July 10, 1850-Mar. 3, 1853
Franklin Pierce	William R. King (died Apr. 18, 1853)	Mar. 4, 1853-Mar. 3, 1857
James Buchanan	John C. Breckinridge	Mar. 4, 1857-Mar. 3, 1861
Abraham Lincoln	Hannibal Hamlin	Mar. 4, 1861-Mar. 3, 1865
Abraham Lincoln	Andrew Johnson	Mar. 4, 1865-Apr. 15, 1865
Andrew Johnson		Apr. 15, 1865-Mar. 3, 1869
Ulysses S. Grant	Schuyler Colfax	Mar. 4, 1869-Mar. 3, 1873
Ulysses S. Grant	Henry Wilson	Mar. 4, 1873-Mar. 3, 1877
	(died Nov. 22, 1875)	
Rutherford B. H. Hayes	William A. Wheeler	Mar. 4, 1877-Mar. 3, 1881
James A. Garfield	Chester A. Arthur	Mar. 4, 1881-Sept. 19, 1881
Chester A. Arthur		Sept. 20, 1881-Mar. 3, 1885
Grover Cleveland	Thomas A. Hendricks	Mar. 4, 1885-Mar. 3, 1889
	(died Nov. 25, 1885)	
Benjamin Harrison	Levi P. Morton	Mar. 4, 1889-Mar. 3, 1893
Grover Cleveland	Adlai E. Stevenson	Mar. 4, 1893-Mar. 3, 1897
William McKinley	Garrett A. Hobart	Mar. 4, 1897-Mar. 3, 1901
	(died Nov. 21, 1899)	
William McKinley	Theodore Roosevelt	Mar. 4, 1901-Sept. 14, 1901
Theodore Roosevelt		Sept. 14, 1901-Mar. 3, 1905
Theodore Roosevelt	Charles W. Fairbanks	Mar. 4, 1905-Mar. 3, 1909
William H. Taft	James S. Sherman	Mar. 4, 1909-Mar. 3, 1913
Woodrow Wilson	Thomas R. Marshall	Mar. 4, 1913-

The fact that several Presidents served two terms with different Vice-Presidents will account for the repetition of the names of the Presidents. It will be seen from the above list that there have been thirty-five presidential terms of office, although some of these terms, as in the case of President Roosevelt's first service, were not for a full elective term. There have been twenty-seven Presidents.

B

THE CONSTITUTION OF THE UNITED STATES OF AMERICA

WE the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common Defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I

SECTION 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.] ¹

The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachu-

¹ The clause included in brackets is amended by the Fourteenth Amendment, second section.

setts eight, Rhode-Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland Six, Virginia ten, North Carolina five, South Carolina five and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

SECTION 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside; And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States; but the party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

SECTION 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

SECTION 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

SECTION 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

SECTION 7. All Bills for raising Revenue shall originate in the

House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be passed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION 8. The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate Commerce with Foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the value thereof, and of foreign Coin; and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the Supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-yards, and other needful Buildings; — And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

SECTION 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The privilege of the Writ of Habeas Corpus shall not be suspended unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another; nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No money shall be drawn from the Treasury, but in consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States; And no Person holding any Office of Profit or Trust under them, shall without the Consent of the Congress, accept of any present, Emolument, Office or Title, of any kind whatever, from any King, Prince, or foreign State.

SECTION 10. No State shall enter into any Treaty, Alliance or Confederation; grant Letters of Marque and Reprisal; coin Money, emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws; and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States, and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

ARTICLE II

SECTION 1. The Executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together, with the Vice-President, chosen for the same Term, be elected, as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

[The Electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number, of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two-thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice-President.]¹

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.

¹ This clause has been superseded by the Twelfth Amendment.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice-President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation: — “I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.”

SECTION 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any subject relating to the Duties of their respective Offices, and he shall have the Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose appointments are not herein otherwise provided for and which shall be established by Law; but the Congress may by Law vest the Appointment of such inferior Officers as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next session.

SECTION 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their

Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

SECTION 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE III

SECTION 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office.

SECTION 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; — to all Cases affecting Ambassadors, other public Ministers and Consuls; — to all Cases of admiralty and Maritime Jurisdiction; — to Controversies to which the United States shall be a Party; — to Controversies between two or more States; — between a State and Citizens of another State; — between Citizens of different States — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The trial of all Crimes, except in cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said

Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

SECTION 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

ARTICLE IV

SECTION 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws, prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

SECTION 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labor in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labor, but shall be delivered up on Claim of the Party to whom such Service or Labor may be due.

SECTION 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

SECTION 4. The United States shall guarantee to every State in

this Union a Republican Form of Government, and shall protect each of them against invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

ARTICLE V

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

ARTICLE VI

All debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE VII

The Ratification of the Conventions of nine States shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

DONE in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and eighty seven and of the Independence of the United States of America the Twelfth. IN WITNESS whereof We have hereunto subscribed our Names,

GO. WASHINGTON
Presidt. and deputy from Virginia.

New Hampshire

JOHN LANGDON

NICHOLAS GILMAN

Massachusetts

NATHANIEL GORHAM

RUFUS KING

Connecticut

WM. SAML. JOHNSON

ROGER SHERMAN

New York

ALEXANDER HAMILTON

New Jersey

WIL: LIVINGSTON

WM. PATTERSON

DAVID BREARLEY

JONA: DAYTON

Pennsylvania

B. FRANKLIN

THOMAS MIFFLIN

ROBT. MORRIS

GEO. CLYMER

THOS. FITZSIMONS

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GOUV. MORRIS

Delaware

GEO. READ

GUNNING BEDFORD, JUN.

JOHN DICKINSON

RICHARD BASSETT

JACO: BROOM

Maryland

JAMES MCHENRY

DAN. OF ST. THOS. JENIFER

DANL. CARROLL

Virginia

JOHN BLAIR

JAMES MADISON, JR.

North Carolina

WM. BLOUNT
HU. WILLIAMSON

RICHD. DOBBS SPAIGHT

South Carolina

H. RUTLEDGE

CHARLES COTESWORTH PINCK-
NEY

CHARLES PINCKNEY

PIERCE BUTLER

Georgia

WILLIAM FEW

ABR. BALDWIN

Attest:

WILLIAM JACKSON, *Secretary*.

Articles in addition to, and amendment of, the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the Several States, Pursuant to the Fifth Article of the original Constitution.

ARTICLE I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.¹

ARTICLE II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

¹ The first ten amendments to the Constitution of the United States were proposed to the legislatures of the several States by the First Congress, on the 25th of September, 1789. They were ratified by the following States, and the notifications of ratification by the governors thereof were successively communicated by the President to Congress: New Jersey, November 20, 1789; Maryland, December 19, 1789; North Carolina, December 22, 1789; South Carolina, January 19, 1790; New Hampshire, January 25, 1790; Delaware, January 28, 1790; Pennsylvania, March 10, 1790; New York, March 27, 1790; Rhode Island, June 15, 1790; Vermont, November 3, 1791, and Virginia, December 15, 1791. There is no evidence on the journals of Congress that the legislatures of Connecticut, Georgia, and Massachusetts ratified them.

ARTICLE III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

ARTICLE VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

ARTICLE VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.¹

ARTICLE XII

The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; —

The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; — The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as Presi-

¹ The Eleventh Amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Third Congress, on the 5th of March, 1794; and was declared in a message from the President to Congress, dated the 8th of January, 1798, to have been ratified by the legislatures of three fourths of the States.

dent, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. — The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.¹

ARTICLE XIII

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.²

ARTICLE XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities

¹ The Twelfth Amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Eighth Congress, on the 12th of December, 1803, in lieu of the original third paragraph of the first section of the second article; and was declared in a proclamation of the Secretary of State, dated the 25th of September, 1804, to have been ratified by the legislatures of three fourths of the States.

² The Thirteenth Amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Thirty-eighth Congress, on the 1st of February, 1865, and was declared, in a proclamation of the Secretary of State, dated the 18th of December, 1865, to have been ratified by the legislatures of twenty-seven of the thirty-six States.

of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.¹

¹ The Fourteenth Amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Thirty-ninth Congress, on the 16th of June, 1866. The Secretary of State issued a proclamation, dated the 28th of July, 1868, declaring that the amendment had been ratified by the legislatures of thirty of the thirty-six States.

ARTICLE XV

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.¹

ARTICLE XVI

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.²

ARTICLE XVII

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies; Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.³

¹ The Fifteenth Amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Fortieth Congress on the 27th of February, 1869, and was declared, in a proclamation of the Secretary of State, dated March 30, 1870, to have been ratified by the legislatures of twenty-nine of the thirty-seven States.

² The joint resolution proposing this amendment was passed by the Sixty-first Congress at the First Session, begun and held on the 15th of March, 1909, and was declared in a proclamation of the Secretary of State, dated February 25, 1913, to have been ratified by thirty-eight of the forty-eight States.

³ This amendment was submitted to the States for ratification by joint resolution of the Sixty-second Congress, Second Session, beginning December 4, 1911. This resolution provided that in lieu of the first paragraph of Section 3 of Article I of the Constitution of the United States, and in lieu of so much of paragraph 2 of the same section as relates to the filling of vacancies, the above be proposed as an amendment to the Constitution, to be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three fourths of the States. This amendment was declared, in a proclamation of the Secretary of State, dated May 31, 1913, to have been ratified by thirty-six of the forty-eight States.

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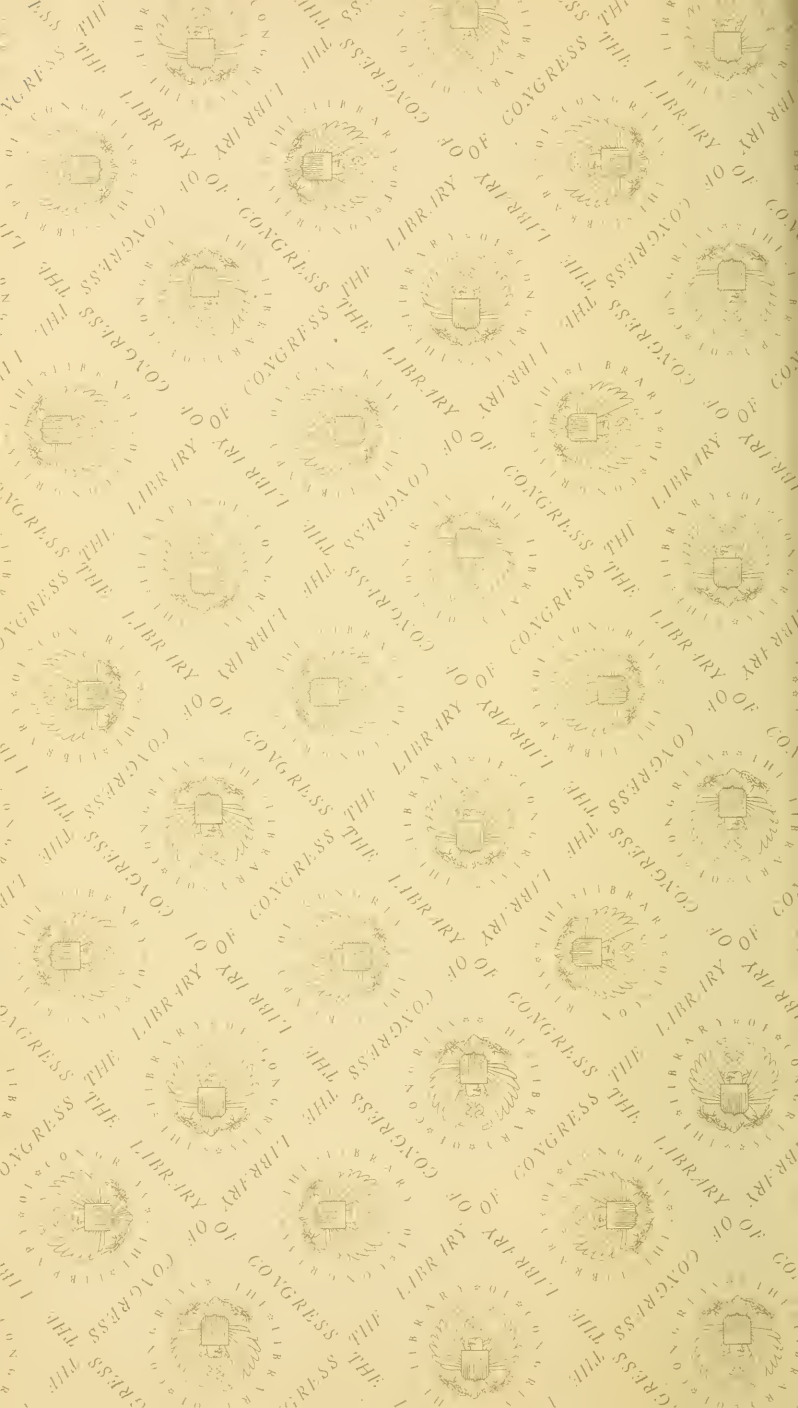
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